

JUDICIAL COUNCIL MEETING

AGENDA

October 24, 2022

Meeting held through Webex
and In Person

Matheson Courthouse
Council Room
450 S. State St.
Salt Lake City, UT. 84111

Chief Justice Matthew B. Durrant, Presiding

1. 9:00 a.m. Welcome & Approval of Minutes..... Chief Justice Matthew B. Durrant
(Tab 1 - Action)
2. 9:05 a.m. Oath of Office for Judge Suchada Bazzelle, Judge James Gardner, and
Judge Thomas Low Chief Justice Matthew B. Durrant
(Information)
3. 9:05 a.m. Selection of Judicial Council Executive CommitteesRon Gordon
(Tab 2 - Action)
4. 9:10 a.m. Selection of Judicial Council Vice Chair.....
(Action) Chief Justice Matthew B. Durrant
5. 9:15 a.m. Chair's Report Chief Justice Matthew B. Durrant
(Information)
6. 9:20 a.m. State Court Administrator's Report.....Ron Gordon
(Information)
7. 9:25 a.m. Reports: Management Committee Chief Justice Matthew B. Durrant
Budget and Fiscal Management Committee Judge Kara Pettit
Liaison Committee..... Judge Kara Pettit
Policy, Planning, and Technology Committee Judge David Connors
Bar Commission.....Margaret Plane, esq.
(Tab 3 - Information)
8. 9:35 a.m. Office of Innovation UpdateSue Crismon
(Information)
9. 9:45 a.m. Budget and Grants..... Karl Sweeney
(Tab 4 - Action)

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|-----|------------|---|---|
| 10. | 9:55 a.m. | Court Commissioner Conduct Committee Report..... | Judge Ryan Harris
Keisa Williams |
| 11. | 10:10 a.m. | Board of Juvenile Court Judges Report
(Tab 5 - Information) | Judge Craig Bunnell
Sonia Sweeney |
| 12. | 10:15 a.m. | Senior Judge Certification.....
(Tab 6 - Action) | Neira Siaperas |
| 13. | 10:20 a.m. | Green Phase Workgroup Report
(Tab 7 - Action) | Ron Gordon |
| | 10:40 a.m. | Morning break | |
| 14. | 10:50 a.m. | Dissolution of the Enterprise Justice Court
(Tab 8 - Action) | Jim Peters |
| 15. | 11:00 a.m. | Justice Court Reform
(Tab 9 - Action) | Judge Paul Farr
Jim Peters
Ron Gordon |
| | 12:00 p.m. | Lunch break | |
| | 12:10 p.m. | Continue Justice Court Reform.....
(Action) | Judge Paul Farr
Jim Peters
Ron Gordon |
| | 2:00 p.m. | Afternoon break | |
| | 2:10 p.m. | Continue Justice Court Reform.....
(Action) | Judge Paul Farr
Jim Peters
Ron Gordon |
| 16. | 4:00 p.m. | Executive Session - there will an executive session | |
| 17. | 4:30 p.m. | Adjourn | |

Consent Calendar

The consent calendar items in this section are approved without discussion if no objection has been raised with the Administrative Office of the Courts or with a Judicial Council member by the scheduled Judicial Council meeting or with the Chair of the Judicial Council during the scheduled Judicial Council meeting.

None

Tab 1

Agenda

JUDICIAL COUNCIL MEETING
Minutes

September 13, 2022

**Meeting held through Webex
and In Person**

**Zermatt Resort
Basel Room
784 W. Resort Drive
Midway, UT 84049**

12:30 p.m. – 5:47 p.m.

Chief Justice Matthew B. Durrant, Presiding

Members:

Chief Justice Matthew B. Durrant, Chair
Hon. Todd Shaughnessy, Vice Chair
Hon. Keith Barnes
Hon. Brian Brower
Hon. Samuel Chiara
Hon. Augustus Chin
Hon. David Connors
Hon. Ryan Evershed
Hon. Paul Farr
Hon. Elizabeth Lindsley
Hon. David Mortensen
Hon. Kara Pettit
Margaret Plane, esq.
Hon. Derek Pullan

Excused:

Justice Paige Petersen
Michael Drechsel

Guests:

Hon. Michele Christiansen Forster, Court of Appeals
Travis Erickson, TCE, Seventh District Court
Hon. Dennis Fuchs, Senior Judge
Justice Diana Hagen, Supreme Court
Holly Langton, GOPB
Hon. Richard Mrazik, Third District Court

AOC Staff:

Ron Gordon
Neira Siaperas
Lauren Andersen
Brody Arishita
Shane Bahr
Todd Eaton
Jordan Murray
Bart Olsen
Chris Palmer
Jim Peters
Jon Puente
Keri Sargent
Nick Stiles
Karl Sweeney
Sonia Sweeney
Melissa Taitano
Keisa Williams
Jeni Wood

Guests Cont.:

Hon. Cristina Ortega, Second District Court
Commissioner Bridget Romano, JPEC
Hon. Rick Romney, Provo Justice Court
Mark Urry, TCE, Fourth District Court
Dr. Jennifer Yim, JPEC
Justice Michael Zimmerman

1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. Justice Diana Hagen attended on behalf of Justice Paige Petersen.

Motion: Judge Keith Barnes moved to approve the August 19, 2022 Judicial Council meeting minutes, as presented and to approve the August 19, 2022 Annual Budget and Planning meeting minutes, as presented. Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

2. CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant, Ron Gordon, Neira Siaperas, and other court personnel attended the 2022 CCJ/COSCA Western Region Summit (Summit), which focused on *How to Select and Implement Remote and Hybrid Court Services and Operations*.

3. STATE COURT ADMINISTRATOR'S REPORT: (Ron Gordon)

Mr. Gordon introduced Sonia Sweeney as the new Juvenile Court Administrator, noting that Ms. Sweeney has quickly begun to understand the working of the juvenile courts. The Council will have a lengthy discussion following their October meeting about justice court reform.

Mr. Gordon noted that a Legislator may introduce a bill to remove indeterminate sentencing because they felt that authority to determine the length of a sentence should be held with judges, not the Board of Pardons. Mr. Gordon will start gathering feedback on this issue from judges and stakeholders. The Liaison Committee will begin discussions on this issue as well.

The current draft of the Green Phase Workgroup proposed report will include the courts using suggested factors but not include mandates or presumptions for judges. Utah was the only state at the Summit that would allow complete judicial discretion on whether to hold virtual or in person hearings. The Workgroup has taken feedback from stakeholders into consideration. Judge Paul Farr and Judge Shaughnessy thought giving full discretion to judges may be a mistake. Judge Pettit felt that judicial discretion was important because there were many variables to consider when holding hearings.

4. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Budget & Fiscal Management Committee Report:

The work of the committee will be addressed later in this meeting.

Liaison Committee Report:

The committee met to discuss interim items and will start meeting more often in preparation of the upcoming session.

Policy, Planning, and Technology Committee Report:

Judge Derek Pullan said the committee is finishing the Policy, Planning, and Technology rule amendment. The committee will continue their work on the funding issue of the Supreme Court.

Bar Commission Report:

Margaret Plane updated the Council that the Bar's new website is available and includes an easier search system. The Bar Commission will approve a survey that will be sent to all Bar members to identify ways to better serve them. The Commission decided not to hold a 2023 Summer Convention, in part because online CLEs have been so well-received.

5. RACIAL AND ETHNIC DISPARITY WORKGROUP: (Jon Puente, Judge Richard Mrazik, and Judge Cristina Ortega)

Chief Justice Durrant welcomed Jon Puente, Judge Richard Mrazik, and Judge Cristina Ortega. Mr. Puente recently held an event for minority law students. A primary objective of the Office of Fairness and Accountability (OFA) is to support the Judiciary's efforts to eliminate bias from court operations. The duties of the OFA include conducting data collection and research, through collaboration with national experts. The OFA formed the Racial and Ethnic Disparity Data Gathering Workgroup, composed of judges, representatives from the AOC, prosecutors, defense counsel, law enforcement, probation supervision, and community representatives. The workgroup will implement a data gathering and analysis project that will identify disparities that contribute to racial and ethnic biases in the justice system.

The workgroup's foundational principles

- Target touchpoints in the criminal justice system that involve both judicial decisions and sufficient data variability.
- Gather a scope of data broad enough to identify possible biases of non-judicial actors and systems.
- Not hold individual districts, counties, or judges accountable for any disparity that is discovered in the past.

The OFA will provide the Judicial Council with their findings if the initial analysis finds racial and ethnic disparities in Judiciary related to pretrial release, sentencing, and/or probation violation resolutions.

Judge Mrazik explained that certain judicial decision situations, such as search warrants or decisions to bind over at preliminary hearings, rarely have data variability because the applicable legal standard is so low. Whereas, other judicial decision situations, such as pretrial release, sentencing or resolution of probation violation have tremendous data variability. The workgroup decided to focus their analysis on pretrial release, sentencing, and probation violation. Among other information, the data gathered will include custody status, pretrial risk assessment scores, initial charges, recommendations made by both prosecutors and defense counsel, presentence investigations report recommendations, and probation violation report recommendations. The workgroup may consider data collection on victim characteristics, gender identity, and age.

The workgroup is considering partnering with the “Massive Data Institute (MDI) at Georgetown’s McCourt School of Public Policy.” One key finding of a Massachusetts study identified that initial charges are one of the strongest correlations with racial disparities in sentencing.

Judge Pullan wondered if there are too few variables to get an accurate statistic. Judge Mrazik said if the comparisons become too granular, they won’t have statistically valid data.

Judge Pullan recognized that at each point they have input from different frameworks, such as at the pretrial release stage, judges have the PSA Report. He wondered if racial disparities could be found in those reports, for example, statistically a person of color may be arrested more times than a person not of color. Judge Mrazik understood Judge Pullan’s point and noted that there are disparities that may be built into these reports but they are hoping this data collection project may sift through some of this. Judge Pullan asked if they will look at the systems that make recommendations to the court, such as the PSA Reports or prosecutor or defense attorney recommendations.

Judge Ortega said the workgroup is trying to determine how they are going to gather data from recordings, since orders don’t provide all of the information they need. Judge Mrazik stated that someone will have to decide how much research and resources they want to put into this project. The workgroup is considering starting with Salt Lake County and obtaining the data that is kept from local entities, such as the Salt Lake Prosecutor’s Office.

Judge Pettit said once the courts move to the cloud-based FTR system, the data may be easier to obtain.

Judge Shaughnessy commented that the cost for the Georgetown consultants is not a huge amount but the cost for the data mining will be significant and may require the Council to make a commitment for resources. Mr. Puente will put forth three models to the Council for consideration. The first model is the Oregon model, which focuses on the future. The problem with that is that they will have to wait 3-5 years for enough data. Washington State is the second model, which asked judges to volunteer for the data gathering. The third model is the European model, which is using public records and notifying people they have a certain amount of time to correct issues. This would include education to correct biases.

Chief Justice Durrant thanked Mr. Puente, Judge Mrazik, and Judge Ortega.

6. JUDICIAL BRANCH EDUCATION COMMITTEE REPORT: (Justice Diana Hagen and Lauren Andersen)

Chief Justice Durrant welcomed Justice Diana Hagen and Lauren Andersen. The Education Department continued to evolve in 2021-2022, as they introduced more tools, new people and transitioned to hybrid events.

Key performance metrics

- 24,933 enrollments in live trainings and online, on-demand courses. 82% of these enrollments received credit.

- Hosted seven judicial conferences, four New Judge Orientations, two New Employee Orientations, one Employee Conference, one Justice Court Clerk Conference, one virtual Mental Health Summit and one Problem Solving Conference. Six of these events were offered in a hybrid format.
- Supported the 2022 Legislative Update and Justice Court's Law & Literature event.

The 2021 Mental Health Summit and the Annual Judicial Conference were held virtually. In 2022, the courts returned to in-person and hybrid conferences.

In addition to the Mental Health Summit and the Annual Judicial Conference, the Department supported the Commissioners Retreat, Appellate Court Conference, District Court Judges Conference, Justice Court Clerks Conference, Court Employee Conference, Legislative Update, Justice Court Judges Conference, Juvenile Court Judges Conference, Law & Literature, and Problem Solving Conference.

Justice Court Clerk Certification launched on January 1, 2022. To date, 358 of the 385 justice court clerks have registered and completed at least one Certification course. From January 1 through June 30, 2022 clerks have successfully completed a total of 2,876 courses.

The Department also collaborated with the juvenile probation department to create the Performance Education for Probation Guide. The Guide provides information about required and optional training, while mapping out learning paths based on professional development needs. Similarly, the Education Department is collaborating with Clerks of Court to create learning pathways for Judicial Assistants.

Chief Justice Durrant thanked Justice Hagen and Ms. Andersen.

7. JUDICIAL PERFORMANCE EVALUATION COMMISSION REPORT: (Dr. Jennifer Yim and Commissioner Bridget Romano)

Chief Justice Durrant welcomed Dr. Jennifer Yim and Commissioner Bridget Romano, Vice Chair of JPEC. Commissioner Romano stated that JPEC's website has been accessed more frequently than in the past. Dr. Yim presented JPEC's Self-Represented Litigant Pilot Proposal, noting the purpose of a pilot is to analyze the value of the data generated and the process of data collection. JPEC pilot projects do not generate data that are used in the evaluation of judges.

Project Impetus

In 2021, a justice court judge wrote to JPEC with concerns about the fairness of their evaluation. Since only 5% of the cases before the judge had legal counsel, aside from the public defender, the judge argued JPEC should not give special emphasis to the lawyer surveys if it did not also survey the litigants who were self-represented.

Both Parties Self-Represented			
District Court		Justice Court	
Case type	Total cases	Case type	Total cases
Divorce/Annulment	5,990	Small Claims	11,615
Protective Orders	2,423	Small Claims – Gov't	162

Civil Stalking	796	Misdemeanor	5
Eviction	398	Infraction	2
Custody and Support	343	Traffic and Contempt	1 each
Total	9,950	Total	11,785

One Party Self-Represented			
District Court		Justice Court	
Case type	Total cases	Case type	Total cases
Debt Collection	49,994	Traffic Court	66,270
Divorce/Annulment	4,572	Misdemeanor	20,948
Eviction	3,218	Infraction	3,971
Traffic Court	3,177	DUI	1,687
Involuntary Commitment	1,688	Small Claims	1,014
Total	60,961	Total	92,876

Background: “Lawyer-less Courts”

“[The Landscape of Civil Litigation in State Courts](#)” by Paula Hannaford-Agor, NCSC (2015)

- 76% of state court cases in the study’s dataset had at least 1 self-represented party.
- Only tort cases had a majority of cases (64%) with both parties represented by an attorney.
- “The vast majority of civil cases that remain in state courts are debt collection, landlord/tenant, foreclosure, and small claims cases... The majority of defendants in these cases, however, are self-represented.”

“[Judges in Lawyer-less Courts](#)” by Anna Carpenter, Colleen Shanahan, Jessica Steinberg, Alyx Mark (2022)

- Definition: “Lawyer-less” courts are those where more than three-quarters of cases involve at least one unrepresented party.”
- A judge who engages in a substantive way with pro se litigants promotes better transparency, improves perceptions of procedural justice, and better develops the factual record.

Survey Access

- Self-represented litigants must be surveyed “within 30 days of the day on which the case in which the person appears in the judge’s court is closed, exclusive of any appeal.” Utah Code § 78A-12-204(6) Judicial Performance Survey.
- JPEC Website
- Utah courts Self-Help web pages, in the after-judgment sections of the following:
 - Divorce
 - Parentage
 - Motion to Enforce
 - Petition for Essential Treatment and Intervention
 - Debt Collection
 - Small Claims

- Emails to self-represented litigants with MyCase accounts.

For Discussion

- Survey content
- Other ideas for evaluating “lawyer-less courts”
 - Surveys of others with expertise in the proper functioning of the courts?
 - “Expert” courtroom observation?

Judge Shaughnessy thought surveying litigants would present a number of challenges and felt courtroom observers may provide more useful information. Dr. Yim wasn’t sure if courtroom observers would be trained to identify the right information when sitting in certain calendar hearings. Judge Shaughnessy thought the existing courtroom observers were well-trained and could probably handle these but felt JPEC should have them observe a certain number of calendars. Judge Pullan thought one distinction of importance was whether the observations included cases where one or both litigants were self-represented. He believed that self-represented parties are often going to feel like they were treated unfairly. Judge Brian Brower regularly explains procedures to self-represented litigants and was concerned about the survey because many litigants don’t understand the process so they leave feeling like they were not heard.

Commissioner Romano explained that the analysis is the first step, training the second step, and implementation after those steps. Judge Pettit thought the survey should identify the type of case and the type of calendar. Judge Elizabeth Lindsley recommended minor changes to the survey to allow for judicial improvement.

Chief Justice Durrant thanked Dr. Yim and Commissioner Romano.

8. OFFICE OF INNOVATION UPDATE: (Nick Stiles and Margaret Plane)

Chief Justice Durrant welcomed Nick Stiles and Margaret Plane. Mr. Stiles briefly stated that the Office of Innovation (Office) has not heard back yet on the Stand Together grant. As of July, the Office has received 79 applications, 46 of which have been forwarded to the Supreme Court for consideration. To date this year, there have been 25,000 legal services provided. Ms. Plane said the Bar Commission continues to work identifying whether they can house the Office. They are aiming to make a recommendation by the December 16 Commission meeting. The Bar Commission will work with Mr. Stiles on gathering information they still need.

Chief Justice Durrant thanked Mr. Stiles and Ms. Plane.

9. BOARD OF APPELLATE COURT JUDGES REPORT: (Judge Michele Christiansen Forster and Nick Stiles)

Chief Justice Durrant welcomed Judge Michele Christiansen Forster and Nick Stiles. Judge Christiansen Forster mentioned that they continue to review recommendations for the appellate roster of indigent representation. John Nielsen is the new Chair of the Standing Committee on Appellate Representation. They are working on amendments to address how sealed records are handled at the appellate level.

The Supreme Court is back to in-person/hybrid hearings while the Court of Appeals is still fully remote at least through September. Both courts are having their courtrooms fitted with Webex, which will allow for hybrid hearings.

They are using senior judge coverage until the two vacant Court of Appeals judicial positions are filled. They will meet with Mr. Puente for discussions of the Office of Fairness of Accountability's work.

Chief Justice Durrant thanked Judge Christiansen Forster and Mr. Stiles.

10. PROBLEM-SOLVING COURTS RECERTIFICATIONS: (Judge Dennis Fuchs)

Chief Justice Durrant welcomed Judge Dennis Fuchs. Judge Fuchs reviewed the problem-solving courts that were presented for recertification.

Courts that meet all Required and Presumed Best Practices

Adult Drug Court	Salt Lake County	Judge Blanch
Adult Drug Court	Salt Lake County	Judge Hogan
Adult Drug Court	Salt Lake County	Judge Gibson
Veteran's Court	Salt Lake County	Judge Mow

Courts that do not meet all Required and Presumed Best Practices

Adult Drug Court	Salt Lake County	Judge Skanchy
Juvenile Family Dependency Court	Salt Lake County	Judge Renteria
Juvenile Family Dependency Court	Salt Lake County	Judge Eisenman
Juvenile Family Dependency Court	Salt Lake County	Judge Jan
Juvenile Family Dependency Court	Salt Lake County	Judge Johnson
Juvenile Family Dependency Court	Salt Lake County	Judge Beck

Judge Skanchy's Adult Drug Court does not meet all Presumed Best Practices due to some drug tests not being returned within 48 hours. Judge Connors said drug testing has become a high profile issue and wondered what avenues the court has to respond. Judge Fuchs thought the courts can notify the drug testing company that the courts may not renew their contract if they can't get timely testing done. Judge Pullan said if the testing company can't meet the requirement, the Council can decertify this court and thought holding these discussions with the company may be beneficial.

All of the Juvenile Family Dependency Courts that do not meet the Presumed Best Practices are due to the minimum participant requirement. Judge Fuchs noted participant numbers are increasing as they slowly move back to in-person hearings.

Judge Fuchs met the new Treatment Court Coordinator and looks forward to her arrival. Shane Bahr thought the new Coordinator can assist with these situations.

Chief Justice Durrant thanked Judge Fuchs.

Motion: Judge Shaughnessy moved to approve recertifying all of the problem-solving courts, including the six courts that do not meet all Required and Presumed Best Practices, as amended to require someone to hold a discussion with the drug testing company about the courts' expectations. Judge Connors seconded the motion, and it passed unanimously.

Judge Fuchs offered to hold those discussions.

11. JUSTICE COURT REFORM: (Jim Peters and Ron Gordon)

Chief Justice Durrant welcomed Jim Peters and Ron Gordon. The Justice Court Reform Workgroup has been conducting a number of focus groups to identify any questions or concerns, facilitated by the National Center for State Courts (NCSC). A focus group consisting of city and county officials will be held later this week. The NCSC will then create a survey that will be sent to stakeholders for further feedback on justice court reform. Mr. Peters would like to gather information from the appellate courts as well. The fiscal note is still being compiled, including personnel costs of about 260 additional clerks, staff, and IT staff. Some funds could be redirected from justice courts to the new division courts. The fiscal note may reach \$50 – \$70 million. Judge Farr said they may propose a name change from “division court” after receiving feedback.

Chief Justice Durrant thanked Mr. Peters and Mr. Gordon.

12. BOARD OF JUSTICE COURT JUDGES REPORT: (Judge Rick Romney and Jim Peters)

Chief Justice Durrant welcomed Judge Rick Romney and Jim Peters. There are 73 judges who serve 109 justice courts. There are a number of judges who will not seek retention. Of the 73 judges, 57 are male and 16 are female. The Board continues to work on:

- providing subject-matter expertise for justice court reform,
- recommending improvements to the judicial selection process for justice courts,
- studying payment options for justice court patrons and making recommendations for improvements, and
- developing a workload study for justice court clerks.

The Board will select more goals in the coming year. In the meantime, Judge Romney mentioned that over 300 staff have completed nearly 3,000 courses for justice court certification since its initiation in January, 2022. The Board has also revised their justice courts operating standards.

Chief Justice Durrant thanked Judge Romney and Mr. Peters.

13. MENTAL HEALTH INITIATIVE UPDATE: (Judge Kara Pettit and Chris Palmer)

Chief Justice Durrant welcomed Judge Kara Pettit and Chris Palmer. Mr. Palmer updated the Council that they have established stakeholder groups in each of the districts, including treatment providers and law enforcement. The local conversations include discussions on mobile mental health teams. Two teams have traveled to Florida and Arizona to learn about their mental health models. Law enforcement officers have expressed the need for courts to invest in diverting people pre-adjudication for mental health assessments.

The courts met with the Kem C. Gardner Policy Institute, who recently completed a needs assessment with the courts, where several judges participated. The information the Institute gathered will be presented to the Legislature for resources. Mr. Palmer explained that the courts have very little to do with people until they have charges filed or appear before a judge. He explained that the Legislature gives the courts latitude for diversion courts at the point of charging documents.

Judge Pettit didn't want the courts to cross a line with other agencies in taking a lead on seeking legislative resources, and instead, should remain as facilitators. She stated that the purpose of the courts involvement in the mental health initiative was to try to get statewide resources in place to help those with mental health issues that enter the judicial system but may be better served getting treatment, such as through a diversion program like the mobile crisis centers. Mr. Palmer said when a judge is involved with mental health initiatives, stakeholders receive a powerful message that the courts are interested in diverting those in need pre-adjudication.

Judge Connors told the Council that Mr. Palmer presented on court security at the American Bar Association national conference.

Chief Justice Durrant thanked Judge Pettit and Mr. Palmer.

14. BUDGET AND GRANTS: (Karl Sweeney, Melissa Taitano, Todd Eaton, Brody Arishita, and Jordan Murray)

Chief Justice Durrant welcomed Karl Sweeney, Melissa Taitano, Todd Eaton, Brody Arishita, and Jordan Murray.

Reserve Funding

\$500,076 one-time

This is a request to move unused carryforward funding to Reserves. These funds could then be allocated by the Council through the year end spending process for one time FY 2023 projects.

Motion: Judge Lindsley moved to approve the Reserve Funding one-time funding request of \$500,076, as presented. Judge Chin seconded the motion, and it passed unanimously.

FY 2023 Ongoing Turnover Savings

#		Funding Type	Actual	Forecasted
			Amount YTD	Amount @ YE
1	Carried over Ongoing Savings (from FY 2022, includes unallocated ongoing appropriation)	Internal Savings	250,392	250,392
2	Ongoing Turnover Savings FY 2023	Internal Savings	30,365	530,365
3	TOTAL SAVINGS		280,756	780,756
	2023 Hot Spot Raises		(48,889)	(200,000)
	2023 Authorized Ongoing for Performance Based Raises (will be used at the end of the FY)		-	(450,000)
4	TOTAL USES before YE Requests		(48,889)	(650,000)
Actual Turnover Savings for FY 2023 as of 08/22/2022 Before Judicial Council YE Requests			\$ 231,868	\$ 130,756

FY 2023 One Time Turnover Savings

#		Funding Type	Actual
			Amount
1	One Time Turnover Savings (from actual payroll data versus budget as of PPE 08/05/2022)	Internal Savings	392,881.18
2	YTD Amount Anticipated to be Reimbursed through ARPA Funding (as of PPE 08/05/2022)	Reimbursements	100,213.85
3	Est. One Time Savings for 1,880 remaining pay hours (\$1,750 / pay hour)	Internal Savings (Est.)	3,290,000.00
Total Potential One Time Savings			\$ 3,783,095.03

Funding for Performance Raises

\$450,000 ongoing

This request is for ongoing turnover savings that will be used to fund performance raises for non-judicial court personnel for FY 2023. This amount is consistent with the performance raises approved by the Council for FY 2022. Judge Pullan asked if the Council should identify current retention rates prior to allocating these funds. Mr. Gordon explained that preliminary data has shown positive results in both recruitment and retention efforts. Judge Pettit informed the Council that the Budget and Fiscal Management Committee accounted for these factors and confirmed that authorizing these funds do not necessarily mean spending them. Any funds leftover can be reallocated.

Motion: Judge Connors moved to approve the Funding for Performance Raises ongoing funding request of \$450,000 as presented. Judge Farr seconded the motion, and it passed with Judge Pullan opposed.

FY 2023 Year End Forecasted Available One-time Funds

Forecasted Available One-time Funds			
	Description	Funding Type	Amount
Sources of YE 2023 Funds			
*	Turnover Savings as of pay period ending 08/05/22 (including anticipated ARPA reimbursement)	Turnover Savings	493,095
**	Turnover savings Estimate for the rest of the year (\$1,750 x 1,880 pay hours)	Turnover Savings	3,290,000
(a)	Total Potential One Time Turnover Savings		3,783,095
(b)	Operational Savings From TCE / AOC Budgets	Internal Operating Savings	-
(c)	Reserve Balance (balance from FY 2022 Carryforward) if request approved	Judicial Council Reserve	500,076
	Anticipated Reserve Uses - including previously approved and pending requests	Judicial Council Reserve Uses	(152,000)
Uses of YE 2023 Funds			
	Carryforward into FY 2024 (Maximum is \$2,500,000)	Desired Carryforward	(2,500,000)
Total Potential One Time Savings = (a) + (b) + (c) less Carryforward			\$ 1,631,171
Less: Judicial Council Requests Previously Approved			\$ -
Less: Judicial Council Current Month Spending Requests			\$ (851,000)
Remaining Forecasted Funds Available for FY 2023 YE Spending Requests			\$ 780,171

FY 2023 Quarter 1/Quarter 2 Performance Bonus Payments

\$450,000 one-time funds

The conversion of the court's incentive plans to a court-wide incentive plan (as approved by the Council in May 2021) includes a performance based bonus plan. Under this plan all non-judicial court employees have the opportunity to receive a performance bonus using one-time

turnover savings. Judge Pullan asked how much of performance bonuses were paid to clerical staff who had just received a significant increase from the Legislature last year. Mr. Gordon said the AOC has not tracked these, instead, the TCEs were given latitude to distribute them.

Judge Pullan felt it may be premature to determine the retention rate. He said the Council talked about providing funding for the Supreme Court, which would come from this pool of money and the Council needed to be prepared to financially support the Office of Fairness' project. Mr. Sweeney said as the Legislature provides money for IT uses, there is a declining need for money in IT, therefore, he believes he can balance the decline with other money in the courts. Judge Pettit reminded the Council that they deferred \$200,000 for the Office of Innovation, that can be used. Ms. Plane wanted to be cautious about taking money from personnel to fund projects.

Motion: Judge Farr moved to approve the FY 2023 Quarter 1/Quarter 2 Performance Bonus Payments one-time funding request of \$450,000, as presented. Judge Chin seconded the motion, and it passed with Judge Pullan opposed.

FY 2023 Year End Forecasted Available One-Time Funds

Forecasted Available One-time Funds			
	Description	Funding Type	Amount
Sources of YE 2022 Funds			
*	Turnover Savings as of pay period ending 08/05/22 (including anticipated ARPA reimbursement)	Turnover Savings	493,095
**	Turnover savings Estimate for the rest of the year (\$1,750 x 1,880 pay hours)	Turnover Savings	3,290,000
(a)	Total Potential One Time Turnover Savings		3,783,095
(b)	Operational Savings From TCE / AOC Budgets	Internal Operating Savings	-
(c)	Reserve Balance (balance from FY 2022 Carryforward)	Judicial Council Reserve	500,076
Uses of YE 2023 Funds			
	Carryforward into FY 2023 (Maximum is \$2,500,000)	Desired Carryforward	(2,500,000)
Total Potential One Time Savings = (a) + (b) + (c) less Carryforward			\$ 1,783,171

St. George Courtroom A/V Upgrades

\$141,000 one-time

A purchase order was created in August of 2021 to upgrade the audio systems in all of the St. George courtrooms. Due to supply chain and technology parts shortages, only partial hardware was delivered during FY 2022. When a majority of the hardware had arrived, special arrangements were made through the Legal and Finance Departments to allow IT to partially pay about \$195,000 of this purchase order. The remaining \$141,000 was left open through completion of the project. This request is for that remaining balance to be carried forward for FY 2023.

Motion: Judge Mortensen moved to approve the St. George Courtroom A/V Upgrades one-time funding request of \$141,000, as presented. Judge Connors seconded the motion, and it passed unanimously.

Adobe e-Signature (Adobe Sign) Implementation
\$260,000 one-time

Adobe Sign brings the ability to efficiently sign e-filed documents across all of the different case types and document types and the various persons who need to sign or otherwise access electronic documents including judges, commissioners, court clerical, attorneys, and the public – which includes pro se filers. Judge Pettit asked Mr. Arishita what the courts are gaining from Adobe Sign when they already have the fill and sign ability. He explained that in a true Adobe signature document, no changes can be made, therefore, making it a more secure court document. This would alleviate the need for judicial assistants to have to affix a seal.

Motion: Judge Lindsley moved to approve the Adobe E-Signature (Adobe Sign) Implementation one-time funding request of \$260,000, as presented. Ms. Plane seconded the motion, and it passed unanimously.

Mr. Murray updated the Council on grants in the courts.

Active Grants. The AOC presently holds 12 active grants comprised of 6 federally-awarded grants and 6 non-federally awarded grants.

Closed Grants. Three grants concluded as scheduled at the close of FY 2022. Closed grants include those awarded by The Pew Charitable Trusts supporting the assessment and implementation of various usability and accessibility enhancements to the Online Dispute Resolution platform, a State Justice Institute grant supporting the pilot of the Office of Legal Services Innovation, and a State Asset Forfeiture Grant awarded by the Commission on Criminal and Juvenile Justice in support of the May 2022 Problem Solving Court Conference.

Grant Distribution. Among the 12 active grants in the portfolio of the courts, 4 are administered by the juvenile court, 1 by the IT Department, 2 by the Domestic Violence Program, 3 by the Innovation Office, 1 by the ADR Department, and 1 by the Office of Guardian ad Litem.

Grants Under Consideration. The Stand Together Foundation grant requesting \$975,000 in support of the Innovation Office.

Judge Pullan asked if Mr. Murray felt confident that the grants are being managed appropriately. Mr. Murray believed grant management rules are being followed. He has been reinforcing the guardrails that were put in place.

Chief Justice Durrant thanked Mr. Sweeney, Ms. Taitano, Mr. Eaton, Mr. Arishita, and Mr. Murray.

15. ADMINISTRATIVE FEE FOR DEFERRED TRAFFIC PROSECUTION: (Keisa Williams)

Chief Justice Durrant welcomed Keisa Williams. HB 139 Traffic Violation Amendments, deferred traffic prosecution, goes into effect on October 1, 2022. Related rule amendments and

orders were approved by the Council at its August 19, 2022 meeting. Ms. Williams requested the Council now approve an administrative fee. The code contemplates an administrative fee to be paid by participants to cover costs associated with the development and implementation of the automated system. Utah Code § 77-2-4.2 Compromise of Traffic Charges – Limitations, section (5)(h)(i) states the “Judicial Council shall set and periodically adjust the fee...in an amount that the Judicial Council determines to be necessary to cover the cost to implement, operate, and maintain the deferred prosecution program...” The use of automated orders will help keep the administrative fee lower and more cost effective for court patrons.

The AOC estimates that a \$5.00 fee is necessary to cover initial implementation and operation costs. Staff will provide periodic reports and recommendations to the Council on any necessary adjustments to that amount.

Chief Justice Durrant thanked Ms. Williams.

Motion: Judge Pettit moved to approve a \$5.00 administrative fee, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

16. RULES FOR FINAL APPROVAL: (Keisa Williams)

Chief Justice Durrant welcomed Keisa Williams. The Policy, Planning, and Technology Committee recommended that the following rules be approved as final.

Rule 4-206 Exhibits. For clarification purposes, “biological evidence” has been added to the non-exhaustive list of exhibits.

Rule 9-107. Justice court technology, security, and training account. Following the creation of the Budget and Fiscal Management Committee, the approval process for allocations from the Justice Court Technology, Security and Training Account was modified.

Rule 3-412. Procurement of goods and service. The small purchase limits have been increased to \$5,000 per item and up to \$10,000 for an entire purchase.

Chief Justice Durrant thanked Ms. Williams.

Motion: Judge Farr moved to approve UCJA Rules 4-206 and 9-107, as presented, with an effective date of November 1, 2022 and Rule 3-412, as presented, with an effective date of September 13, 2022, followed by a 45-day comment period. Judge Chin seconded the motion, and it passed unanimously.

17. OLD BUSINESS/NEW BUSINESS

No additional business was discussed.

18. RECOGNITION OF OUTGOING JUDICIAL COUNCIL MEMBER - JUDGE TODD SHAUGHNESSY AND JUDGE DEREK PULLAN: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant thanked Judge Shaughnessy and Judge Pullan for their dedication to the Council and the courts. He felt the judges have done so much for the Judiciary and are superb judges, noting that they are judicial leaders.

19. SENIOR JUDGE RECERTIFICATIONS: (Neira Siaperas)

Neira Siaperas requested the Council go into an executive session to address senior judge recertifications. Judge W. Brent West withdrew his application for Active Senior Judge recertification and instead applied for Inactive Senior Judge certification. Judge Robert Dale withdrew his application, therefore, his term as an Active Senior Judge will expire on December 31, 2022.

20. EXECUTIVE SESSION

Motion: Judge Shaughnessy moved to go into an executive session for the purpose of discussing the character, competence, or physical or mental health of an individual and litigation. Judge Chin seconded the motion, and it passed unanimously.

After the executive session, the following motions were made.

Motion: Judge Pullan moved that the Council recommend to the Supreme Court that Judge Kent Bachman be found qualified for reappointment as an Active Senior Judge, subject to the requirement that he initiate contact with the AOC through an active court email account. Judge Barnes seconded the motion, and it passed unanimously.

Motion: Judge Connors moved that the Council recommend to the Supreme Court that Judge Lynn Davis be certified for reappointment as an Active Senior Judge, conditioned upon following through on a performance plan, developed in conjunction with the Fourth District Court presiding judge addressing training in Judicial Workspace and other technological tools that reduce the burden on court staff. Judge Pettit clarified that the language states “meets qualifications and recommends appointment.” Judge Pullan clarified that the performance plan may include other matters that concern the presiding judge. Judge Chin seconded the motion, and it passed unanimously.

Motion: Judge Pettit moved that the Council recommend to the Supreme Court that Judge W. Brent West be certified for appointment as an Inactive Senior Judge and that Judge Gordon Low be recertified as an Active Senior Judge and to notify the Supreme Court that the Council determined that Judge Ben Hadfield does not meet qualifications as an Active Senior Judge and the Judicial Council does not recommend reappointment. Judge Chin seconded the motion, and it passed unanimously.

Motion: Chief Justice Durrant moved to approve the funding discussed in the executive session for litigation. Judge Brian Brower seconded the motion, and it passed unanimously.

21. CONSENT CALENDAR ITEMS

- a) Forms Committee Forms. Memo concerning Health Care Coverage Provisions in OCAP, Summons for Publication, Motion for Temporary Order, Order on Motion for Temporary Order, Temporary Separation Provisions in OCAP, Motion to Waive Fees, and Objection

to Petition to Expunge Civil Protective Order or Civil Stalking Injunction. Approved without comment.

- b) Rules for Public Comment. UCJA Rules 4-202.04 Request to Access a Record Associated with a Case; Request to Classify a Record Associated with a Case; 4-202.08 Fees for Records, Information, and Services; 1-204 Executive Committees, 1-201 Membership – Election; and 1-302 Membership – Officers – Secretariat. Approved without comment.

22. ADJOURN

The meeting adjourned.

DRAFT

Tab 2

Agenda

Executive Committee Assignments

Approved by the Management Committee on October 11, 2022

Management	Policy	Liaison	Budget
Chief Justice Durrant <u>Judge Pettit</u> Judge Mortensen Judge Farr <u>Judge Lindsley</u>	Judge Connors Judge Chiara Judge Chin <u>Judge Gardner</u> <u>Judge Bazzelle</u>	Justice Petersen Judge Brower Judge Evershed <u>Judge Low</u>	Judge Pettit Justice Petersen Judge Barnes Margaret Plane Judge Lindsley

Tab 3

Agenda

**JUDICIAL COUNCIL'S
MANAGEMENT COMMITTEE**

Minutes

October 11, 2022

**Meeting Held Through Webex
and In Person**

**Matheson Courthouse
Council Room
450 S. State St.
Salt Lake City, Utah 84111**

12:00 p.m. – 1:21 p.m.

Chief Justice Matthew B. Durrant, Presiding

Committee Members:

Chief Justice Matthew B. Durrant, Chair
Hon. Paul Farr
Hon. David Mortensen

Excused:

Michael Drechsel

Guests:

Glen Proctor, TCE Second District Court

AOC Staff:

Ron Gordon
Neira Siaperas
Shane Bahr
Tracy Chorn
Wayne Kidd
Jim Peters
Nick Stiles
Jeni Wood

1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)

Chief Justice Matthew B. Durrant welcomed everyone to the meeting.

Motion: Judge Paul Farr moved to approve the September 6, 2022 Management Committee minutes, as presented. Judge David Mortensen seconded the motion, and it passed unanimously.

2. JUDICIAL COUNCIL EXECUTIVE COMMITTEE ASSIGNMENTS: (Ron Gordon)

Ron Gordon provided the Committee with current executive committee assignments and recommended the following.

- Judge Kara Pettit be moved from the Liaison Committee to the Management Committee. Judge Pettit will remain on the Budget and Fiscal Management Committee;
- Judge Elizabeth Lindsley be assigned to the Management Committee;

- Judge Thomas Low be assigned to the Liaison Committee;
- Judge James Gardner be assigned to the Policy, Planning, and Technology Committee;
- Judge Suchada Bazzelle be assigned to the Policy, Planning, and Technology Committee.

Motion: Judge Farr moved to approve the assignments of Judge Kara Pettit and Judge Elizabeth Lindsley to the Management Committee; the assignment of Judge Thomas Low to the Liaison Committee; and the assignments of Judge James Gardner and Judge Suchada Bazzelle to the Policy, Planning, and Technology Committee, as presented. Judge Mortensen seconded the motion, and it passed unanimously.

3. SELECTION OF VICE CHAIR TO THE JUDICIAL COUNCIL AND MANAGEMENT COMMITTEE: (Chief Justice Matthew B. Durrant)

This item will be presented to the Judicial Council. No discussion took place.

4. STATE COURT ADMINISTRATOR'S REPORT: (Ron Gordon)

Ron Gordon announced that the Green Phase Workgroup finalized the report and recommendations regarding the ongoing use of virtual hearings. The recommendations allow for judicial discretion while providing an opportunity for parties to request virtual or in-person hearings. The Workgroup tried to find a balance with judges, court personnel, patrons, and outside entities. The Workgroup's draft report has been shared with internal and external stakeholders. The Workgroup will present their report to the Judicial Council this month.

5. JUSTICE COURT REFORM: (Judge Paul Farr, Jim Peters, and Ron Gordon)

The Justice Court Workgroup will meet this week with the Supreme Court and with the Board of Justice Court Judges next week. The National Center for State Courts (NCSC) completed their work with focus groups, including respective Boards, justice court clerks, prosecutors, defense attorneys, and local government officials. Based on the responses from the focus groups, the NCSC created a survey that will be sent to appellate, district, and justice court judges, AOC directors, Clerks of Court, prosecutors, defense counsel, staff, and local government entities. There will be limited time for response to the survey because the NCSC will present a summary of the survey responses to the Council in October.

Mr. Gordon expressed concerns about the estimated fiscal note and whether this legislation would result in a return on the investment proportionate to the cost. Judge Farr said initially the purpose was to address de novo appeals, which remains as the highest priority of the reform efforts. The second highest priority would be the financial conflict that municipalities have with their courts. The third priority would include required education levels for judges. Mr. Peters thought judicial independence would fall within the top reasons for the proposed reform, such as justice courts and cities deciding on whether to hold hearings remotely and city administrators dictating on how clerks are responding to court litigants requesting extensions on fine payments.

Mr. Gordon said if misdemeanor cases are moved to a new division court, the revenue would follow. This would somewhat offset the cost of the new court. Cities and counties pool their revenue so it might be difficult for them to identify where the revenue from the justice

courts is being used. The courts must be prepared for a city or county to argue against reform because the revenue from the justice courts is being used to fund things like law enforcement.

Judge Farr mentioned that prosecutors are in favor of the proposed de novo appeal changes. Judge Mortensen agreed with the Workgroup's proposal on de novo appeals and trying to avoid amending the constitution. He proposed eliminating de novo appeals and sending the cases to the Court of Appeals and adding two appellate judges. Judge Farr explained that de novo appeals exist because it was a tool to ensure that due process was satisfied because there were non-lawyer judges hearing cases. He further stated that the Supreme Court stated if they keep non-lawyer judges then the cases could not go directly to the Court of Appeals, essentially keeping de novo appeals in place. The committee agreed that this issue could be remedied by requiring all justice court judges have a law degree. However, this may affect small, rural jurisdictions. The committee wondered if a smaller city justice court could opt to close and have the cases shifted to the county justice court.

The constitution currently states that courts not of record shall be established by statute. Mr. Gordon thought there could be a justice court not of record to handle traffic offenses without having to create a new system of judges and courthouses. He wondered if a judge could handle cases in a court of record on one day and then handle cases in a court not of record on another day. Judge Mortensen confirmed that the constitution does not state what kind of cases courts not of record must house.

Judge Farr said there are tools that can be used to create more independence. Justice court judges salary range could be redefined to a specific amount.

Justice courts have certification standards that their city or county must approve every four years. The Board of Justice Court Judges have been working on the standards.

Chief Justice Durrant confirmed with Judge Farr that high priority issues could be addressed without the full \$70 million fiscal note changes.

6. DISSOLUTION OF THE ENTERPRISE JUSTICE COURT: (Jim Peters)

Pursuant to Utah Code § 78A-7-123. Dissolution of Justice Courts, Jim Peters presented the City of Enterprise's intent to dissolve the Enterprise City Justice Court per Resolution 2202-009 adopted by the Enterprise City Council. Enterprise City requested a shortened amount of time to dissolve the court, as required by statute from one year to December 31, 2022.

Motion: Judge Mortensen moved to add this item to the Judicial Council agenda, as presented. Judge Farr seconded the motion, and it passed unanimously.

7. 2022 LIMITED AUDITS OF JUVENILE COURTS REPORT: (Tracy Chorn)

The Audit Department completed the audit report for the 2022 Limited Audits of Selected Juvenile Courts. The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing. Tracy Chorn, Internal Auditor, served as the audit project lead.

Motion: Judge Farr moved to approve the audit report, as presented. Judge Mortensen seconded the motion, and it passed unanimously.

8. 2022 LIMITED AUDITS OF DISTRICT COURTS REPORT: (Wayne Kidd)

The Audit Department completed the audit report for the 2022 Limited Audits of Selected District Courts. The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing. Tracy Chorn, Internal Auditor, served as the audit project lead. Judge Mortensen appreciated that audits assist the courts resolve issues before they become significant and believed regularly scheduled audits are important.

Motion: Judge Farr moved to approve the audit report, as presented. Judge Mortensen seconded the motion, and it passed unanimously.

9. AUDIT REQUEST JUVENILE COURTS: (Wayne Kidd)

Wayne Kidd requested an audit of Fifth District Beaver Juvenile Court and Sixth District Kanab Juvenile Court. These two courts have not had a full audit conducted by the Internal Audit Department.

Motion: Judge Mortensen moved to approve an audit of Fifth District Beaver Juvenile Court and Sixth District Kanab Juvenile Court, as presented. Judge Farr seconded the motion, and it passed unanimously.

10. SECOND DISTRICT COURT SENIOR JUDGE REQUEST: (Judge Noel Hyde and Glen Proctor)

Glen Proctor requested senior judge usage in excess of 14 days to allow for assistance of the Second District Court's Friday preliminary hearings and during the transition of their new judge. The calendars have grown unwieldy due to pandemic restrictions and require a significant amount of judicial time. The court anticipated the substantial burden to continue through January 2023. The estimated cost would be \$5,600 for half time of senior judge usage or \$11,353 for full time senior judge usage. From May to September 2022, 193 matters were assisted by senior judges. The courts use of senior judges has been enthusiastically supported by prosecutors, defense counsel, and court staff. Judge Mortensen was concerned that having senior judges assist regularly with preliminary hearings can become institutionalized. Mr. Proctor had hoped to end the use of senior judges for the Friday preliminary hearings in October, however, after further discussion with the presiding judge they believed it would be more appropriate to extend this to the end of January.

Motion: Judge Mortensen moved to approve the continued use of senior judges for the Friday preliminary hearings and to assist during the transition of the new judge. Judge Farr seconded the motion, and it passed unanimously.

11. APPROVAL OF JUDICIAL COUNCIL AGENDA: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant addressed the Judicial Council agenda.

Motion: Judge Farr moved to approve the Judicial Council agenda, as amended to add Senior Judge Appointments and Selection of Vice Chair to the Judicial Council and Management Committee. Judge Mortensen seconded the motion, and it passed unanimously.

12. OLD BUSINESS/NEW BUSINESS

No additional business was discussed.

13. EXECUTIVE SESSION

An executive session was held.

14. ADJOURN

The meeting adjourned.

DRAFT

Agenda

**JUDICIAL COUNCIL'S
BUDGET & FISCAL MANAGEMENT COMMITTEE**

**Minutes
August 30, 2022
Meeting held virtually through WebEx
12:00 a.m. – 2:00 p.m.**

Members Present:

Hon. Kara Pettit, (Chair)
Hon. Keith Barnes
Hon. Elizabeth Lindsley
Justice Paige Petersen
Margaret Plane, Esq.

Excused:

Brody Arishita
Neira Siaperas
Jonathan Puente
Chris Talbot
Bart Olsen
Daniel Meza-Rincon
Meredith Mannebach
Nathanael Player

AOC Staff Present:

Ron Gordon
Sonia Sweeney
Nick Stiles
Jim Peters
Todd Eaton
Shane Bahr
Jordan Murray
Karl Sweeney
Alisha Johnson
Melissa Taitano
Suzette Deans, Recording Secretary

Guests:

Mark Urry, TCE, Fourth District Court
Brett Folkman, TCE, First District Courts
Kim Brock, TCE, Third District Court

1. WELCOME AND APPROVAL OF MINUTES (Judge Kara Pettit – “Presenter”)

Judge Kara Pettit welcomed everyone to the meeting.

Ron introduced Sonia Sweeney as the new Juvenile Court Administrator. She comes to us from the Utah Department of Health and Human Services.

Motion: Judge Elizabeth Lindsley moved to approve the August 4, 2022 minutes, as presented. Justice Paige Petersen seconded the motion, and it passed unanimously.

2. FY 2022 Financial Schedules (Alisha Johnson – “Presenter”)

Ongoing Turnover Savings (“OTS”) – Alisha Johnson reviewed the period 2 financials and gave an update on OTS. At the end of FY22 we ended with \$250,392 of OTSs that will be carried forward into FY23. Most of these ongoing turnover savings carried forward were from reserves of FY22 OTS set aside in June 2022 by the Judicial Council. So far in FY23 we have earned \$30,365 of ongoing turnover savings. The amount is low but we are still in a time where new people are selecting benefits so we anticipate that amount will increase. YTD OTS is \$280,756. The forecasted amount for year end is conservatively estimated to be \$780,756.

As of 08/22/2022, the OTS schedule shows \$200,000 of hot spot raises as uses that have been pre-authorized by delegated authority from the Judicial Council to the State Court Administrator and Deputy. If the \$450,000 in 2023 performance-based raises are authorized by the Judicial Council in its next meeting, AOC Finance is forecasting that we will still end FY23 with \$130,800 in OTS.



FY 2023 Ongoing Turnover Savings as of 08/22/2022

#		Funding Type	Actual	Forecasted
			Amount YTD	Amount @ YE
1	Carried over Ongoing Savings (from FY 2022, includes unallocated ongoing appropriation)	Internal Savings	250,392	250,392
2	Ongoing Turnover Savings FY 2023	Internal Savings	30,365	530,365
3	TOTAL SAVINGS		280,756	780,756
	2023 Hot Spot Raises		(48,889)	(200,000)
	2023 Authorized Ongoing for Performance Based Raises (will be used at the end of the FY)		-	(450,000)
4	TOTAL USES before YE Requests		(48,889)	(650,000)
Actual Turnover Savings for FY 2023 as of 08/22/2022 Before Judicial Council YE Requests			\$ 231,868	\$ 130,756
Prior Report Totals			\$ -	\$ -

One-Time Turnover Savings - One-time TOS are generated from position vacancies and reimbursements of payroll expenditures with ARPA funds. Our forecast of one-time TOS before any uses are deducted is estimated to be \$3.7M.



FY 2023 One Time Turnover Savings

Updated as of Pay Period Ending 08/05/2022 (208 out of 2088 hours)

#	Funding Type	Actual Amount
1	One Time Turnover Savings (from actual payroll data versus budget as of PPE 08/05/2022)	392,881.18
2	YTD Amount Anticipated to be Reimbursed through ARPA Funding (as of PPE 08/05/2022)	100,213.85
3	Est. One Time Savings for 1,880 remaining pay hours (\$1,750 / pay hour)	3,290,000.00
Total Potential One Time Savings		\$ 3,783,095.03
Prior Report Totals		\$ -

ARPA Expenditures – Life to date through 8/24/2022 we have spent \$4.1M in IT access to justice part 1 expenses and \$800K in case backlog expenses, respectively, leaving us an authorized balance to be expended before 12/31/2024 of approximately \$7.1M of the \$12M in FY 2022 authorized ARPA funds. For FY 2023, we can start using our 2023 ARPA funding of \$3M as well.

#		Funded by Legislature	GOPB Approved	Requested Amount	Approved Amount	Actual Amount	Balance Available	Activity Code	Description
1	IT Access to Justice - Response to COVID - Part I	May-21	Yes	11,000,000	11,000,000	4,100,219	6,899,781	ITCV	Projects will extend thru 12/31/24
2	Courts Case Backlog - Part I*	May-21	Yes	1,000,000	1,000,000	830,625	169,375	BKLG	See detail below.
	Subtotal			12,000,000	12,000,000	4,930,844	7,069,156		
	Requests to Legislature for FY 2023 - \$3,000,000 approved by the Legislature			Requested	Approved	Actual	Available		
1	IT Access to Justice - Response to COVID - Part II	2022 GS	Submitted 10/21	1,373,400	1,373,400	-	1,373,400	ITC2	Projects will extend thru 12/31/24
2	Courts Case Backlog - Part II	2022 GS	Submitted 10/21	1,000,000	1,000,000	-	1,000,000	BKL2	Projects case backlog will take thru 6/30/2023
3	COVID-19 Supplies	2022 GS	Submitted 10/21	640,000	302,100	-	302,100	CV19	
4	Legal Sandbox Response to COVID	2022 GS	Submitted 10/21	649,000	324,500	-	324,500	LSCV	
5	Self-Help Center	2022 GS	Submitted 10/21	64,000	-	-	-		
6	Interpreter Equipment	2022 GS	Submitted 10/21	97,000	-	-	-		
7	Eviction Court	2022 GS	Submitted 10/21	166,000	-	-	-		
8	Public Outreach & Engagement	2022 GS	Submitted 10/21	30,000	-	-	-		
9	IT Access to Justice - Response to COVID - Part III	2022 GS	Submitted 10/21	1,881,500	-	-	-		
	Subtotal			5,900,900	3,000,000	-	3,000,000		
				\$ 17,900,900	\$ 15,000,000	\$ 4,930,844	\$ 10,069,156		

Personnel Expenses (as of PPE 8/5/22):	\$	780,315
Mileage Expenses (as of PPE 8/5/22):	\$	2,626
Sr. Judge Travel Expenses (as of 8/24/2022):	\$	2,203
		<u>\$ 785,143</u>
COVID Testing Kit purchase:	\$	45,482
	\$	<u>830,625</u>



FY 2023 Carryforward and Ongoing Requests - 2022 Year End

7/29/2022

Funding Sources

	One Time	Ongoing
Total Case Processing Amounts from 2022 General Session Fiscal Notes	\$ 247,900	\$ 818,200
Expected Carryforward Amount from Fiscal Year 2022 (as of 7/29/2022)	\$ 3,200,000	\$ -
Ongoing Turnover Savings (forecasted as of 7/29/2022 - funding for Hot Spot, Targeted, and Performance Raises already included)	\$ -	\$ 409,541
Total Available Funding	\$ 3,447,900	\$ 1,227,741

Ongoing Requests

	Presented		Judicial Council Approved	
	One Time	Ongoing	One Time	Ongoing
4 Clerk of Court Supplemental to JA Increase	N/A	\$ 59,000	N/A	\$ 59,000
5 Public Outreach Coordinator	N/A	\$ 120,000	N/A	\$ 120,000
6 Partial Restoration of FY 2021 Budget Cuts	N/A	\$ 112,500	N/A	\$ 112,500
7 New District Court Law Clerk Attorney	N/A	\$ 95,850	N/A	\$ 95,850
8 New Associate General Counsel - Legal Department	N/A	\$ 150,000	N/A	\$ 150,000
9 HB 143 DULs - New Judicial Assistants	N/A	\$ 320,000	N/A	\$ 320,000
10 New HR Compensation & Classification Manager	N/A	\$ 120,000	N/A	\$ 120,000
11 Pre-fund Portion of Annual Performance Raises	N/A	\$ 150,000	N/A	\$ 150,000
12 Pre-fund Portion of Hot Spot Raises	N/A	\$ 82,000	N/A	\$ 82,000
Subtotal	\$ -	\$ 1,209,350	\$ -	\$ 1,209,350
Net Ongoing Total - carry into FY 2023		\$ 18,391		\$ 18,391

One Time Requests

	Presented		Judicial Council Approved	
	One Time	Ongoing	One Time	Ongoing
1 AALL Conference Attendance Funds - Law Library	\$ 845	N/A	\$ 845	N/A
2* ODR Program Development	\$ 46,200	N/A	\$ 46,200	N/A
3 Bountiful District Courtroom #2 Audio Upgrade	\$ 40,000	N/A	\$ 40,000	N/A
4 Law Clerk Commitment Fulfillment	\$ 11,000	N/A	\$ 11,000	N/A
5 IT - Delayed Delivery of Statewide Routers and WIFI Access Points	\$ 160,000	N/A	\$ 160,000	N/A
6 TSOB Probation Office A/V System - Phase 2	\$ 61,509	N/A	\$ 61,509	N/A
7* HR - Onboarding and Recruitment Software	\$ 19,030	N/A	\$ 19,030	N/A
8* Education - In Person Conferences and Education Team Training	\$ 168,500	N/A	\$ 168,500	N/A
9* Employee Incentive Awards	\$ 280,000	N/A	\$ 280,000	N/A
10* ICJ Operations Funding	\$ 21,000	N/A	\$ 21,000	N/A
11* Education Assistance Program Funding	\$ 85,000	N/A	\$ 85,000	N/A
12* Secondary Language Stipend	\$ 83,200	N/A	\$ 83,200	N/A
13* Public Transportation Reimbursement Program	\$ 50,000	N/A	\$ 50,000	N/A
14 Cisco Portal Upgrade - IT	\$ 150,000	N/A	\$ 150,000	N/A
15* Retain Contract Developers - IT	\$ 682,000	N/A	\$ 682,000	N/A
16* IT Replacement Inventory	\$ 250,000	N/A	\$ 250,000	N/A
17 Seventh District Courthouse Improvements	\$ 8,840	N/A	\$ 8,840	N/A
18 Partial Restoration of FY 2021 Budget Cuts	\$ 112,500	N/A	\$ 112,500	N/A
19 IT Bandwidth and Webex Renewal	\$ 118,000	N/A	\$ 118,000	N/A
20* Time-limited Law Clerks	\$ 191,200	N/A	\$ 191,200	N/A
21 IT Staff Augmentation	\$ 270,000	N/A	\$ 270,000	N/A
22 Pilot Program - Counseling for Court Employees and Jurors	\$ 35,000	N/A	\$ 35,000	N/A
23 Justice Court Reform Analysis Partner	\$ 50,000	N/A	\$ 50,000	N/A
24 Education - Diversity, Equity and Inclusion Training	\$ 25,000	N/A	\$ 25,000	N/A
25* Divorce Education for Children	\$ 12,000	N/A	\$ 12,000	N/A
26 Audio for Spanish Fork Courtrooms	\$ 17,000	N/A	\$ -	N/A
Subtotal	\$ 2,947,824	\$ -	\$ 2,930,824	\$ -
Balance Remaining After Judicial Council Approvals			\$ 517,076	
+ Balance Remaining Inclusive of "Presented"	\$ 500,076			

LEGEND

Highlighted Items are currently being presented to the Budget and Fiscal Management Committee.

Highlighted Items have been approved by the BFMC and are on track for being presented to the Judicial Council.

Highlighted Items have been previously approved by the Judicial Council.

* - Items have been presented and approved in prior years.

+ - One-time balance remaining will go into Judicial Council reserve. Ongoing balance remaining will be included in the beginning balance for ongoing turnover savings.

BFMC approval to submit request to Judicial Council does not imply Judicial Council must approve the recommendation.

If more funds are available than the total of requests received, prioritization is optional.





FY 2023 Year End Forecasted Available One-time Funds

Forecasted Available One-time Funds			One-time Spending Plan Requests		Current Requests	Judicial Council
Description	Funding Type	Amount	#		Amount	Approved
Sources of YE 2023 Funds						
* Turnover Savings as of pay period ending 08/05/22 (including anticipated ARPA reimbursement)	Turnover Savings	493,095	1	Performance Bonus Payments	\$ 450,000	
** Turnover savings Estimate for the rest of the year (\$1,750 x 1,880 pay hours)	Turnover Savings	3,290,000	2	Additional Set Aside for Reserve	\$ 300,000	
(a) Total Potential One Time Turnover Savings		3,783,095	3	Adobe E-Signatures	\$ 260,000	
(b) Operational Savings From TCE / AOC Budgets	Internal Operating Savings	-	4	St. George Courtroom Audio	\$ 141,000	
(c) Reserve Balance (balance from FY 2022 Carryforward)	Judicial Council Reserve	500,076				
Anticipated Reserve Uses	Judicial Council Reserve Uses	(52,000)				
Uses of YE 2023 Funds						
Carryforward into FY 2023 (Maximum is \$2,500,000)	Desired Carryforward	(2,500,000)				
Total Potential One Time Savings = (a) + (b) + (c) less Carryforward		\$ 1,731,171				
Less: Judicial Council Requests Previously Approved		\$ -				
Less: Judicial Council Current Month Spending Requests		\$ (1,151,000)				
Remaining Forecasted Funds Available for FY 2023 YE Spending Requests		\$ 580,171				
Updated 08/24/2022						
* Actual turnover savings as calculated on a pay period basis through 05/13/2022. Data can be found in the Budget Summary Excel workbook on the Personnel tab.						
** Actual per hour turnover savings for the last 3 pay periods (oldest to newest) are \$2,719.27, \$2,247.93 and \$2,284.20. The average per hour turnover savings YTD was \$2,370.65. These numbers do include ARPA reimbursements.						
(b) This amount will be updated based on forecasts from budget managers (TCEs, AOC Directors, etc) to be received in January/February, 2023.						

Year End Spending Requests Presented for Approval to Forward to Judicial Council

1. Q1/Q2 FY 2023 Performance Bonus Payments (Karl Sweeney – Presenter)

Karl Sweeney is requesting \$450,000 of 1x Turnover Savings (TOS) (\$340,000 in cash payments + \$110,000 in Retirement/employer taxes). The conversion of the Court's incentive plans to a court-wide incentive plan (as approved by the Judicial Council in May 2021) includes a performance-based bonus plan. Under this plan all non-judicial Court employees have the opportunity to receive a Performance Bonus using one-time Turnover Savings (1x TOS) similar to the one-time Incentive Bonus payments that were made in Spring FY 2021 and twice in FY 2022. Performance Bonuses are based on completion of milestones in performance expectations. They are generally the largest type of one-time compensation payments that can be given to non-judicial officer employees. They are authorized by the Judicial Council by request from the State Court and Deputy State Court Administrators and funded from 1x Turnover Savings.

Motion: Justice Paige Petersen made a motion to approve Judge Keith Barnes seconded the motion, and it passed unanimously. Will be forwarded on to the Judicial Council with a favorable recommendation to approve.

2. St. George Courtroom Audio (Todd Eaton – Presenter)

Todd Eaton is requesting \$141,000 in one-time funds for St. George courtroom AV upgrades.

PO 2108108808 was cut in August of 2021 to upgrade the audio systems in all of the St. George courtrooms. Due to supply chain and technology parts shortages only, partial hardware was delivered during FY22. When a majority of the hardware had arrived, special arrangements were made through Legal and Finance to allow us to partially pay for about \$195,000 of this purchase order. The remaining \$141,000 was left open through completion of the project. This request is for that remaining balance to be carried forward for FY23.

The upgrades were completed July 29th, 2022. We are completing final sign off, billing, and payment currently. This request simply tracks that the project was not completed during FY22 and, thus, the remaining funding was carried forward into the beginning FY23 balance and should be funded as a FY23 “Year End” request.

Motion: Judge Keith Barnes made a motion to approve Justice Paige Petersen seconded the motion, and it passed unanimously. Will be forwarded on to the Judicial Council with a favorable recommendation to approve.

3. Adobe E-Signatures (Todd Eaton – Presenter)

Todd Eaton is requesting \$260,000 in one-time turnover savings for Adobe E-Signature implementation.

Courts IT has been busy building tools to “bring the courts to the public” by providing improved access to Justice. Many of the ARPA projects are geared towards increasing accessibility especially for pro se filers. Tools like MyCase offer the ability for pro se parties in District, Justice and Juvenile courts to be able to e-file documents that would go to a clerical queue for review and to accept or revise. The ability to e-file documents brings much greater efficiency to the front part of the process but will be greatly impaired if it is not paired with an efficient workflow for digitally signing. Adobe Sign brings the ability to efficiently sign e-filed documents across all of the different case types and documents types and the various persons who need to sign or otherwise access electronic documents including Judges, Commissioners, Court Clerical, Attorneys, and the Public – which includes pro se filers.

Other places in the Courts where Adobe Sign can be used include purchasing contracts, employment correspondence, and any other Court documents. This request is to cover costs for 1 year of Adobe Sign. We have negotiated with Adobe to bring the cost down from over \$1 per signature down to a very reasonable cost per transaction (which may include multiple documents and signatures) of \$0.25 cents. This request is calculated based on estimate of 1 million transactions that the Courts would utilize Adobe Sign to gather signatures across all levels of the courts. Funding for Adobe Sign for FY 2024 is being sought from the legislature as part of IT’s judicial priority request (#6).

Motion: Margaret Plane made a motion to approve and Justice Paige Petersen seconded the motion, and it passed unanimously. Will be forwarded on to the Judicial Council with a favorable recommendation to approve.

Increase of Reserve Balance

1. Set Aside for Reserve (Alisha Johnson – Presenter)

Alisha Johnson is requesting \$500,076 in one-time carryforward funds to be moved to the reserve. The Judicial Council has historically maintained a reserve for contingency spending requests. The \$500,076 amount is on par with reserves for most recent years but due to potential

contingent liabilities for FY 2023 we may bring a supplemental request for increased reserves to the Judicial Council in a future month. Adding in the \$500,076 would give the court's a reserve of \$500,076.

Motion: Judge Keith Barnes made a motion to approve Justice Paige Petersen seconded the motion, and it passed unanimously. Will be forwarded on to the Judicial Council with a favorable recommendation to approve.

4. Upcoming BFMC Meeting Dates

Committee agreed on the following 2023 BFMC dates.

- Fri 1/6/2023 at 10:00 a.m. ***
- Mon 2/13/2023
- Fri 3/3/2023
- Mon 4/10/2023
- Mon 5/8/2023
- Mon 6/12/2023
- Wed 7/5/2023
- Fri 8/4/2023
- Tues 8/29/2023
- Tues 10/10/2023
- Mon 11/6/2023
- Mon 12/4/2023

All meetings for 2023 will be held virtually through WebEx. Unless otherwise noted above meetings will start at 12:00 p.m. All meeting dates for 2023 have been added to the Court's Master Calendar.

5. Grants Update

Jordan Murray gave a summary of the grant report for period April 2022 through June 2022. There are 12 active grants of which 6 are non-federal and 6 are federal. The Innovation Office was included in the total even though it is not a traditional grant. Jordan asked the committee if they wanted the Innovation Office to be in the quarterly grant reports going forward and the BFMC elected to add the innovation office grants (including ARPA funds) to the report.

6. Old Business/New Business

Karl Sweeney reviewed a change to the judicial priority amount for the JD required request that was presented to the Judicial Council at the August 19, 2022 annual budget meeting.

Ron Gordon asked the committee to be thinking about commissioners' salaries and how to best fund their increase since the legislature is unlikely to provide ongoing funding except to judicial officers (judges).

Meeting adjourned 1:05 p.m.

Next meeting via WebEx October 11, 2022.

DRAFT

Tab 4

Agenda

Budget and Grants Agenda for the October 24, 2022 Judicial Council Meeting

1. FY 2023 Financials / Turnover Savings / ARPA Update Alisha Johnson
(Tab 1 - Discussion)
2. Ongoing, Reserve and Year End Spending Requests Karl Sweeney
(Tab 2 – Action)

Year End Spend Requests Presented for Judicial Council Approval

4. IT Equipment for new JA Clerks Todd Eaton
5. Replacement for Access Revenue System Brody Arishita & Karl Sweeney
3. Reallocation Request to Legislature Chris Talbot & Karl Sweeney
(Tab 3 – Action)
4. Proposal to Increase Interpreter Pay Rate Jessica Leavitt
(Tab 4 – Action)
5. Grant Approval – HB 359 Jordan Murray
(Tab 5 – Action)

Tab 1



FY 2023 Ongoing Turnover Savings as of 09/29/2022

#		Funding Type	Actual	Forecasted
			Amount YTD	Amount @ YE
1	Carried over Ongoing Savings (from FY 2022, includes unallocated ongoing appropriation)	Internal Savings	250,392	250,392
2	Ongoing Turnover Savings FY 2023	Internal Savings	100,120	550,120
3	TOTAL SAVINGS		350,511	800,511
	2023 Hot Spot Raises		(91,268)	(200,000)
	2023 Authorized Ongoing for Performance Based Raises (will be used at the end of the FY)		-	(450,000)
4	TOTAL USES before YE Requests		(91,268)	(650,000)
Actual Turnover Savings for FY 2023 as of 09/29/2022			\$ 259,244	\$ 150,511

Prior Report Totals \$ 231,868 \$ 130,756

- * Ongoing turnover savings only happens when a vacant position is filled at a lower rate and / or with lower benefits.
- * There are currently 32 positions that have turned over within the past 90 days that are currently listed as having unknown benefits. As those employees select their benefits, if they select lower benefits, there will be additional savings.
- * Currently, 60.6 FTE are vacant with 19 in process of being filled. If those fill, with no other changes, that would leave 41.6 FTE vacant.
- 1 Line 1 includes the previously allocated \$150,000 set aside for performance raises and the \$82,000 set aside for hot-spot (listed in the uses section)
- 2 We are currently estimating \$50,000 of ongoing savings a month for the remaining 9 months of the fiscal year.
- 3 When the carried over and appropriated amount (line 1) with the YE forecast (line 2), the grand total for YE 2023 increases to ~ \$800,500.
- 4 With all hot spot and performance raises money is expended (a total of \$650,000), the YE available ongoing OTS is reduced to ~ \$150,500.



FY 2023 One Time Turnover Savings

Updated as of Pay Period Ending 09/16/2022 (448 out of 2088 hours)

#		Funding Type	Actual
			Amount
1	One Time Turnover Savings (from actual payroll data versus budget as of PPE 09/16/2022)	Internal Savings	871,655.55
2	YTD Amount Anticipated to be Reimbursed through ARPA Funding (as of PPE 09/16/2022)	Reimbursements	184,069.27
3	Est. One Time Savings for 1,640 remaining pay hours (\$1,750 / pay hour)	Internal Savings (Est.)	2,870,000.00
Total Potential One Time Savings			\$ 3,925,724.82

Prior Report Totals \$ 3,783,095.03

- * Actual per hour turnover savings for the last 4 pay periods (oldest to newest) are \$2,147.74, \$2,237.44, \$2,295.97, and \$2,714.93. The average per hour turnover savings YTD was \$2,356.53. These numbers do include ARPA reimbursements.
- 2 The ARPA expenses listed do not match the reported amount on the ARPA Expenses page because this number includes one additional pay period of data.



ARPA Expenses as of 09/27/2022

#		Funded by Legislature	GOPB Approved	Requested Amount	Approved Amount	Actual FY 2022	Actual FY 2023	Balance Available	Activity Code	Description
						Expended Amount	Expended Amount			
1	IT Access to Justice - Response to COVID - Part I	May-21	Yes	11,000,000	11,000,000	3,042,468	1,585,662	6,371,870	ITCV	Projects will extend thru 12/31/24
2	Courts Case Backlog - Part I*	May-21	Yes	1,000,000	1,000,000	707,963	172,289	119,748	BKLG	See detail below.
	Subtotal			12,000,000	12,000,000	3,750,431	1,757,951	6,491,618		
Requests to Legislature for FY 2023 - \$3,000,000 approved by the Legislature				Requested	Approved	Actual 2022	Actual 2023	Available		
1	IT Access to Justice - Response to COVID - Part II	2022 GS	Submitted 10/21	1,373,400	1,373,400	-	-	1,373,400	ITC2	Projects will extend thru 12/31/24
2	Courts Case Backlog - Part II	2022 GS	Submitted 10/21	1,000,000	1,000,000	-	-	1,000,000	BKL2	Projects case backlog will take thru 6/30/2023
3	COVID-19 Supplies	2022 GS	Submitted 10/21	640,000	302,100	-	-	302,100	CV19	
4	Legal Sandbox Response to COVID	2022 GS	Submitted 10/21	649,000	324,500	-	-	324,500	LSCV	
5	Self-Help Center	2022 GS	Submitted 10/21	64,000	-	-	-	-		
6	Interpreter Equipment	2022 GS	Submitted 10/21	97,000	-	-	-	-		
7	Eviction Court	2022 GS	Submitted 10/21	166,000	-	-	-	-		
8	Public Outreach & Engagement	2022 GS	Submitted 10/21	30,000	-	-	-	-		
9	IT Access to Justice - Response to COVID - Part III	2022 GS	Submitted 10/21	1,881,500	-	-	-	-		
	Subtotal			5,900,900	3,000,000	-	-	3,000,000		
				\$ 17,900,900	\$ 15,000,000	\$ 3,750,431	\$ 1,757,951	\$ 9,491,618		

ARPA spending cut off date is 12/31/2024 ; ARPA cut off date for lost revenue is 12/31/2023.

* Data pulled using list of employees provided by TCEs

FY 2022 Expenses Include

Personnel Expenses:	\$	680,101
Mileage Expenses:	\$	2,475
Sr. Judge Travel Expenses:	\$	2,203
	\$	684,778
COVID Testing Kit purchase:	\$	23,185
	\$	707,963

Tab 2

Forecasted Available One-time Funds

[illegible]

* Actual turnover savings as calculated on a pay period basis through 09/16/2022. Data can be found in the Budget Summary Excel workbook on the Personnel tab.

** Actual per hour turnover savings for the last 4 pay periods (oldest to newest) are \$2,147.74, \$2,237.44, \$2,295.97, and \$2,714.93. The average per hour turnover savings YTD was \$2,356.53. These numbers do include ARPA reimbursements.

(b) This amount will be updated based on forecasts from budget managers (TCEs, AOC Directors, etc) to be received in January/February, 2023.

4. FY 2023 YE Spending Request – IT Equipment for New JA Clerks

The Judicial Branch receives budget funds through the Legislative appropriations process. Funds appropriated for FY 2023 are to be spent between July 1, 2022 and June 30, 2023; however current spending forecasts indicate the Courts will not fully expend our appropriations by June 30, 2023. This is a request to the Budget and Fiscal Management Committee/Judicial Council to allocate the use of some of these anticipated unspent funds for **one-time projects that could be delivered prior to June 30, 2023.**

Date: 9/30/2022

Department or District: Various Districts

Requested by: Karl Sweeney

Request title: IT Equipment Funding for Newly Hired JA Clerks

Amount requested: One time: **\$5,872**

Purpose of funding request:

As a result of legislative funding approved to hire additional JAs for debt collection and to handle additional caseload for DUIs, the Courts will hire 7 new JAs in Q1/Q2 FY 2023. These new hires need IT equipment to perform their jobs. Since the legislature did not provide 1x funding for these new hires, we will need to fund IT purchases out of district funds, IT funds or YE funds. After communication with the districts and IT, here are the sources of the funds they will use for the IT equipment funding (**Bold = YE Funds used**):

1st District - .5 new heads – funded with district/IT funds

2nd District - 1 new head – funded with district/IT funds

3rd District – 2 new heads – funded with YE funds – 2 laptops w/extra power cords (\$1100 each), 2 extra monitors (\$118 each), and 2 new printers (\$500 each) = \$3,436

4th District – 1 new head – funded with YE funds – 1 laptop and 1 extra monitor = \$1,218

5th District – 1 new head – funded with YE funds – 1 laptop and 1 extra monitor = \$1,218

6th District - .5 new head – funded with district/IT funds

7th District - .5 new head – funded with district/IT funds

8th District - .5 new head – funded with district/IT funds

The total of the bold amounts is \$5,872.

Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents:

Traditionally, the legislature does not fund equipment and supplies for new hires, only ongoing funds. This request will fund the IT equipment needed for the 7 new FTEs that are being hired as a result of legislation passed in the 2021 and 2022 sessions.

Alternative funding sources, if any:

District funds could be used but many districts have already committed their surplus funds for other uses.

If this request is not funded at this time, what are the consequences or is there an alternative strategy?

Inefficient use of new staff.

5. FY 2023 YE Spending Request – IT – Build-out of Replacement for Access Revenue System

The Judicial Branch receives budget funds through the Legislative appropriations process. Funds appropriated for FY 2023 are to be spent between July 1, 2022 and June 30, 2023; however current spending forecasts indicate the Courts will not fully expend our appropriations by June 30, 2023. This is a request to the Budget and Fiscal Management Committee/Judicial Council to allocate the use of some of these anticipated unspent funds for **one-time projects that could be delivered prior to June 30, 2023.**

Date: 10/1/2022

Department or District: IT and Finance

Requested by: Brody Arishita and Karl Sweeney

Request title: Build-out of Replacement for Courts' Access Revenue System

Amount requested: \$40,000

One-time Turnover Savings funds

Purpose of funding request: The Courts have used a MS Access-based revenue system for +/- 20 years. This Access program is an aging software and when combined with the design of the Courts Access revenue program as a single database it has long outlived its useful life and is becoming increasingly unstable.

IT and AOC Finance are working together to build a replacement revenue system using a more robust open source web browser based software system as the code base and customizing it to meet the needs of the Courts. This new system is designed to be flexible in meeting new demands and uses code that is more robust than Access. IT has funded this project entirely from its internal funds for approximately 8 months but has reached the limits of the funds it can use. The new revenue system needs approximately 6 additional months of build-out. The estimated cost of the external consultant on this project for the next 6 months is \$40,000.

Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.

When complete, this revenue system will also be deployed to those areas of the courts (self-help center, law library, AOC finance) that receive non-CORIS/CARE revenues. It will be the first time that these types of revenues will have a dedicated system of record.

Alternative funding sources, if any: None.

If this request is not funded at this time, what are the consequences or is there an alternative strategy? The risk that the Courts revenue system could crash and not be recoverable remains. Also, the legacy system will only run on an unsupported older version of Access and is not upgradable in its current form. This presents a security risk as well since security patches and updates are no longer available for the older versions of Access.

Tab 3



GOVERNOR'S OFFICE OF Planning & Budget

Driving the best investment and use of Utah's resources

FY 23 and FY 24 Budget Reallocation Form

Agency: JUDICIAL BRANCH (courts)
 Division or Program: Reallocation of Retiring Farmington Courthouse Construction Bond
 Request Title: Reallocation of Retiring Farmington Courthouse Construction Bond
Please do not prioritize reallocation requests against standard budget requests.

TABLE 1

Please add more rows if necessary.

LINE ITEM	SOURCE (GF, ITF, USF, or OTHER)	FY 23 ONE-TIME	FY 24 ONE-TIME	FY 24 ONGOING
BCAA	GF	\$0	\$0	\$399,045.93
BCAA	GF	\$0	\$0	(\$399,045.93)
TOTAL (MUST NET TO ZERO)		\$0	\$0	\$0

If applicable, summarize other sources besides General Fund (GF), Income Tax Fund (ITF), and Uniform School Fund (USF). If reallocating from ARPA funds, please include a description of eligibility:

A. BACKGROUND & BUDGETARY DETAILS

1. Summarize the request, the specific problem it will solve, and how it will solve the problem.

The objective of this request is to reallocate the retiring construction bond annual rent payment (\$399,045.93) so the Court may retain the amount as a credit towards the construction of a new Davis County Courthouse. The Court will be proposing the replacement of three aging courthouses (Farmington, Layton and Bountiful) with a new combined facility that will also provide future expansion in a growing County.

It is anticipated that the new courthouse will be built on the existing Farmington Courthouse site with a portion of the existing building to be sold to Davis County. We will also be exploring the sale of the existing State-owned Layton Courthouse to Layton City. The existing Bountiful Courthouse is a shared building we lease from Bountiful City. It is unknown at this time if these other facility changes will provide additional funding reallocation opportunities for the new project.

After the proper legislative committees approves the project, the reallocated annual funds would be used towards the new annual bond payment. The new construction bond payment will be determined in the near future during the design and cost estimating process. The new combined courthouse facility could house up to 16 courtrooms and could reach total construction costs of \$80M - \$90M. This reallocation would reduce the new project funding request by providing a credit within the Court Facilities budget.

2. Provide an itemized budget for the reallocated funding, including revenue and expenditure sources, to demonstrate how the funding will be used.

The reallocated annual bond payment would only be used to reduce any new funding request for a new Davis County Courthouse.

3. How will the line item or previously funded item from which funds are being reallocated be impacted?

N/A

B. CREATING VALUE

4. What value will the reallocated resources create for Utah? If the reallocation is for a new program, what performance measures will be reported?

N/A

5. Provide details, sources, research, and analysis that acts as evidence for this request or the associated program (e.g, cost benefit analysis, program evaluation, results from pilot program, etc).

Reallocating this annual bond payment to help fund a new Courthouse will improve access to justice in a new combined facility that meets current design standards for both ADA accessibility and security.

C. COORDINATION, STRATEGIC PLANNING, AND LONG-TERM VISION

6. How does this reallocation further the Cox-Henderson Administration's priorities?

See answer to #5. This request furthers the Court's mission to "provide an open, fair, efficient and independent system for the advancement of justice under the law".

7. Provide the statutory and administrative rule references which allow or require the activity for which reallocated funding is requested. If this request requires statute or rule changes, describe required changes. Agencies must coordinate all legislation through the governor's general counsel and legislative director.

N/A

8. How does this request further your agency's strategic priorities? Include a direct citation of your agency's strategic plan if one exists.

The Judicial Council's Facilities Master plan ranks the Davis County Courthouse as the #1 Capital Development Project request for FY24. Reallocating this retiring bond would provide a credit towards the overall cost for this much needed project.

9. If applicable, which other agencies or stakeholders have you coordinated with during development of this request? If the reallocation is for a new program, please describe why this activity should be executed by the requesting agency and not another agency, local government, or third party.

N/A

10. Does this request create any future funding obligations (operations and maintenance, multi-year scale up, etc)?

There will be no new funding obligations at this time. Once the feasibility study is completed, the O&M request would be presented to IGG with the remaining project funding request.

D. EXPANDING ACCESS AND OPPORTUNITY

11. Which populations or geographic areas will benefit most from this request (e.g., new state park users, individuals eligible for enrollment in new or existing programs, rural or urban communities, people from different cultural or racial backgrounds, or all Utahns)?

Residents of Davis County will benefit from the creation of a new combined courthouse.

Tab 4



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

October 4, 2022

Ronald B. Gordon, Jr.
State Court Administrator
Neira Siaperas
Deputy State Court Administrator

MEMORANDUM

TO: Language Access Committee

FROM: Jessica Vázquez-Leavitt, Language Access Program Manager

RE: Rate Increase for Certified Contract Court Interpreters

The AOC proposes to increase the rate for Certified Contract Court Interpreters to \$52. This change comes after conversations with Contract Court Interpreters regarding pay and workload. This change will allow Contract Court Interpreters to remain competitive in the Intermountain West market where average pay ranges between \$25-\$50. The new rate also shows our appreciation for the hard work Certified Contract Court Interpreters have done during the last couple of years. This increase will also allow for contract interpreters to accept assignments from Utah Courts without concerns that they may earn more money interpreting for other states. This increase will enhance the courts' competitive advantage in recruiting interpreters and expand its interpreter roster.

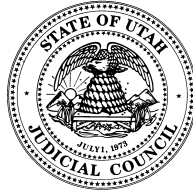
Moving forward, rates would be as follows:

Credential	Contract Rate
Certified	\$52
Approved	\$41
Registered	\$41
Conditionally-Approved	\$23

The funding for the rate increase is coming from the J/W/I fund. This request will cost an estimated \$41,000-\$42,000 and the JWJ can handle the request. Because this is JWJ funding, this is not a Judicial Council request, we only need Judicial Council approval to change the rate.

The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.

Tab 5



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

October 14, 2022

Ronald B. Gordon, Jr.
State Court Administrator
Neira Siaperas
Deputy State Court Administrator

MEMORANDUM

TO: The Judicial Council
CC: The Budget & Fiscal Management Committee

FROM: Karl Sweeney & Jordan Murray

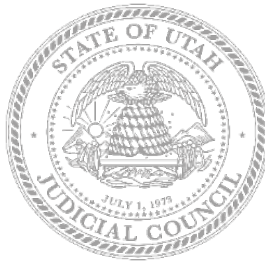
RE: Request to Approve Department of Workforce Services' Provision of Federal Funding ("Subaward") for Eviction Expungements as Mandated by Utah House Bill 359

This request seeks permission from the Judicial Council (cc: Budget & Fiscal Management Committee) to execute the agreement with the Utah Department of Workforce Services (DWS) and fund the FY 2023 costs associated with statute in Utah House Bill 359 (H.B. 359). Effective July 1, 2022, H.B. 359 legislation addresses the expungement of eviction records and anticipates one-time costs to the Courts totaling \$116,600 through FY 2023.

To fund this mandate, the legislature is utilizing previously-authorized federal Emergency Rental Assistance (ERA) funds disbursed as a non-competitive subaward "grant" issued through Utah DWS serving as the pass-through agency. Traditionally, funds issued by the state addressing legislative mandates are funded through other well-established mechanisms (e.g., interdepartmental transfers). This instance of funding to address statutory mandate departs from the standard process and is issued to the Courts as a subaward comprised of ERA funds. Federal ERA grant funds were accepted by the legislature in January 2021.

Enclosed please find the Grant Application Proposal (GAP) prepared for the Utah DWS federal subaward funding the statutory mandate in H.B. 359. The GAP is supplemented with the legislative fiscal note for H.B. 359 "Eviction Records Amendments" (**Exhibit A**) and the "Grant Agreement" between Utah DWS and the Administrative Office of the Courts (**Exhibit B**).

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.



Administrative Office of the Courts

Grant Application Proposal (GAP) Federal Funds

October 14, 2022

Contact Information

Prepared by: Jordan Murray, Grant Coordinator
Phone: (703) 489-2904
Grant Administering Unit: District Courts & Information Technology

Grant Details

Application Deadline: N/A – no solicitation
Amount: \$116,600
Performance Period: July 1, 2022 – June 30, 2023
Award Type: ☐ Recipient
☒ Subrecipient

Grantor: Utah Department of Workforce Services (DWS)
Funding Source: Emergency Rental Assistance (ERA) CFDA #21.023
Grant Title: Eviction Expungements – Utah House Bill 359
Grant Type: ☒ New
☐ Formula Grant Renewal
☐ Amendment to Existing Grant

Legislative Grant Impact per Statute	
Tier 1 – Low	<input checked="" type="checkbox"/>
Up to \$1M per year; and no new permanent full or part time employees; and no new state monies for match.	
Tier 2 – Medium	<input type="checkbox"/>
Greater than \$1M but less than \$10M per year; or adds up to 11 permanent full or part time employees; or requires state to expend up to \$1M per year in new state monies as match.	
Tier 3 – High	<input type="checkbox"/>
Greater than \$10M per year; or adds more than 11 permanent full or part time employees; or requires state to expend greater than \$1M per year in new state monies for match.	

Source: Accounting Manual §11-07.00 Exhibit A (I)(a-c) & UCA 63J-5-203, 63J-5-204(a-b)

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.

1. *Explain (a) the issues to be addressed by this project and describe how the grant funds will contribute to their resolution; and (b) how the grant will assist the Utah Courts to solve problems and promote innovations that cannot be accomplished with existing resources.*

(a) This funding provides general operating costs to complete the work mandated in Utah House Bill 359 to process petition-based eviction expungements; and **(b)** no existing resources were previously allocated for eviction record expungements prior to enactment of House Bill 359.

2. *Describe (a) how this grant will support the mission of the Utah Courts to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law; and (b) how this grant provides measurable benefits to marginalized, minority, pro se, or similar underserved individuals or communities.*

(a) Funds provided by this subaward directly address the fiscal note associated with House Bill 359 to comply with new statute ([Utah Code § 78B-6-853](#)); and **(b)** benefits to marginalized, pro se, and similar underserved communities are directly conveyed through means to petition the expungement of their qualifying eviction records.

3. *Describe the court resources required to carry out the project in the post-award phase and subsequent to grant closeout once funds are expended.*

This work requires an after-the-fact legal review of case documents to assess compliance and eligibility under the new statute criteria. It is estimated that approximately 1% (700) of the annual expungements will require clerical/judicial processing. The District Courts will determine eligibility and process each petition-based eviction expungement. Information Technology will contribute resources for technology-based systems modifications, programming, and development. This subaward funds the salaries and professional fees associated with this work for FY 2023. Beginning FY 2024 the Courts will receive \$35,100 ongoing (general funding – not grant related).

Mr. Murray will manage the overall reporting as this grant involves several areas. Mr. Arishita and his IT project clerk will track the expenditures on this grant and supply reports to Mr. Murray on a monthly basis. Mr. Murray will be the reviewer of the expenditures that IT makes on this project. Mr. Bahr and his District Court staff will monitor the services rendered and compile those reports and deliver them to Mr. Murray.

4. Complete the following tables as applicable with estimated expenditures for up to three state fiscal years. **If no matching contributions are required complete only Table (C).**

[Table A] Cash MatchNot Applicable ☒

Fiscal Year		Funds Disbursed	Matching State Dollars (Cash)					
			General Fund	Dedicated Credits	Restricted Funds	Other (describe)	Maintenance of Effort	Totals
FY	-	\$-	\$-	\$-	\$-	\$-	\$-	\$-
FY	-	\$-	\$-	\$-	\$-	\$-	\$-	\$-
FY	-	\$-	\$-	\$-	\$-	\$-	\$-	\$-
<i>Provide details below for each match, or "N/A" if no match is required</i>								
N/A								

[Table B] In-Kind MatchNot Applicable ☒

Fiscal Year		Funds Disbursed	Matching State Dollars (In-Kind)					
			General Fund	Dedicated Credits	Restricted Funds	Other (describe)	Maintenance of Effort	Totals
FY	-	\$-	\$-	\$-	\$-	\$-	\$-	\$-
FY	-	\$-	\$-	\$-	\$-	\$-	\$-	\$-
FY	-	\$-	\$-	\$-	\$-	\$-	\$-	\$-
<i>Provide details below for each match ("N/A") if no match is required</i>								
N/A								

[Table C] No Match RequirementNot Applicable ☐

Fiscal Year		Funds Disbursed	Matching State Dollars (None)					
			General Fund	Dedicated Credits	Restricted Funds	Other (describe)	Maintenance of Effort	Totals
FY	2023	\$116,600	\$-	\$-	\$-	\$-	\$-	\$116,600
FY	-	\$-	\$-	\$-	\$-	\$-	\$-	\$-
FY	-	\$-	\$-	\$-	\$-	\$-	\$-	\$-

5. *Explain whether additional state funding shall be required to maintain or continue this program, or its infrastructure, when the grants concludes. **If yes**, will the funds required to continue this program come from within your existing budget?*

Beginning with FY 2024, the Courts will receive \$35,100 ongoing to process eviction expungements (sourced from general funds – not grant related).

6. *How many **additional permanent** full or part-time FTEs are required for the grant project at peak levels of grant-funded employment? **If none**, write "N/A".*

N/A

7. *How many **additional temporary** full or part-time FTEs are required for the grant project at peak levels of grant-funded employment? **If none**, write "N/A".*

N/A

Date

APPROVED BY THE JUDICIAL COUNCIL

Signature

STATE COURT ADMINISTRATOR OR DESIGNEE

Resource Impact Assessment

Prepared by Grant Coordinator

October 2022

Recommendation: *The subaward issued by DWS requires no cash nor in-kind matching contributions from the Courts and does not require the provision of additional permanent or temporary employees. As pass-through funding issued from a state administering agency (DWS), the Courts are not required to seek legislative recommendations to accept these funds. With the subaward (\$116,600) and ongoing annual general fund allocation (not grant-related), resources are adequate to support the work required by H.B. 359 legislation.*

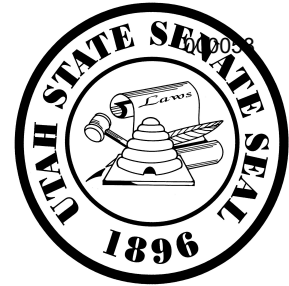
The Utah Legislature has determined it will fund the fiscal note associated with House Bill 359 (Eviction Expungements) with federal Emergency Rental Assistance grant funds awarded to Utah DWS in January 2021. DWS requests the present grant agreement be executed to facilitate the transfer of federal pass-through funds as a subaward to the Courts.

The deliverables associated with this FY 2023 funding will be completed by Information Technology. No additional resources beyond the subaward for FY 2023 and ongoing general fund allocation are required to program the necessary systems and process eviction expungement petitions.

The State Court Administrator (*Mr. Ron Gordon*), District Court Administrator (*Mr. Shane Bahr*), Chief Information Officer (*Mr. Brody Arishita*), General Counsel (*Ms. Keisa Williams*), and Director/Deputy Director of Finance (*Mr. Karl Sweeney & Ms. Alisha Johnson, respectively*) have reviewed the terms enclosed in the grant agreement [**Exhibit B**].



Fiscal Note **EXHIBIT A**
H.B. 359 3rd Sub. (Cherry)
2022 General Session
Eviction Records Amendments
by Judkins, M. (Judkins, Marsha.)



General, Education, and Uniform School Funds

JR4-4-101

	Ongoing	One-time	Total
Net GF/EF/USF (rev.-exp.)	\$(27,900)	\$82,000	\$54,100

State Government

UCA 36-12-13(2)(c)

Revenues	FY 2022	FY 2023	FY 2024
General Fund	\$0	\$7,200	\$7,200
General Fund, One-time	\$0	\$50,400	\$0
Children's Legal Defense (GFR)	\$0	\$2,400	\$300
Civil Fees Judges Retirement Trust Fund	\$0	\$9,000	\$1,100
Court Security Account (GFR)	\$0	\$18,100	\$2,300
Dispute Resolution (GFR)	\$0	\$3,000	\$400
Total Revenues	\$0	\$90,100	\$11,300

This legislation could increase revenue to the following accounts beginning in FY 2023: General Fund - \$7,200 ongoing and \$50,400 one-time, Court Security - \$2,300 ongoing and \$15,800 one-time, Judicial Retirement - \$1,100 ongoing and \$7,900 one-time, Dispute Resolution - \$400 ongoing and \$2,600 one-time, and Children's Legal Defense - \$300 ongoing and \$2,100 one-time.

Expenditures	FY 2022	FY 2023	FY 2024
General Fund	\$0	\$35,100	\$35,100
General Fund, One-time	\$0	\$(31,600)	\$(31,600)
Federal Funds, One-time	\$79,000	+\$37,600 = \$116,600	\$0
Transfers	\$79,000	\$37,600	\$0
Total Expenditures	\$158,000	\$78,700	\$3,500

Enactment of this legislation could cost the Courts \$3,500 ongoing from the General Fund beginning in FY 2023 to process eviction expungement petitions and \$31,600 ongoing from the General Fund beginning in FY 2026 to process automatic eviction expungements. Processing eviction expungement petitions from previous years and completing related technology system modifications could cost the Courts \$79,000 one-time in FY 2022 and \$37,600 one-time in FY 2023, which could be paid for with already-authorized federal Emergency Rental Assistance funds through the Department of Workforce Services.

H.B. 359 3rd Sub. (Cherry)

	FY 2022	FY 2023	⁰⁰⁰⁰⁵⁹ FY 2024
Net All Funds	<u>\$(158,000)</u>	<u>\$11,400</u>	<u>\$7,800</u>

Local Government
UCA 36-12-13(2)(c)

To the extent that a local government agency maintains eviction records, that agency would need to monitor expunged evictions on the Courts' website and expunge those evictions from their own records.

Individuals & Businesses
UCA 36-12-13(2)(c)

Individuals who choose to petition for expungement of an eviction record could pay a \$150 filing fee, expending \$11,300 ongoing and \$78,800 one-time in aggregate.

Regulatory Impact
UCA 36-12-13(2)(d)

Enactment of this legislation could result in a small increase in the regulatory burden for Utah residents or businesses.

Performance Evaluation
JR1-4-601

This bill does not create a new program or significantly expand an existing program.

Notes on Notes

Fiscal notes estimate the direct costs or revenues of enacting a bill. The Legislature uses them to balance the budget. They do not measure a bill's benefits or non-fiscal impacts like opportunity costs, wait times, or inconvenience. A fiscal note is not an appropriation. The Legislature decides appropriations separately.



GRANT AGREEMENT

EVICTIION EXPUNGEMENTS

This Grant Agreement is entered into by and between the **Utah Department of Workforce Services**, 140 East 300 South, Salt Lake City, UT 84111, hereinafter referred to as the **Department** or **DWS** and the following, hereinafter referred to as Grantee or Contractor:

Organization: Utah Administrative Office of the Courts

Address: P.O. Box 140241

City, State Zip: Salt Lake City, UT 84114

Vendor Number:	VC210875	Commodity Code:	99999	UEI Number:	FEYPTAJCLUT7
Contractor Type:	Government	Subrecipient/Contractor:	Subrecipient		
Funding Source:	Emergency Rental Assistance (ERA) CFDA #21.023				

PURPOSE

Eviction Expungements: The funding will cover general operating costs to do the work mandated in House Bill 359. Grantee will process each petition-based eviction expungement. In addressing each petition, Grantee will assess whether the petition qualifies under the new statute and Grantee will process each petition-based eviction expungement.

SOLICITATION

This Agreement has been awarded as a result of the solicitation process, Solicitation #N/A.

PERIOD OF PERFORMANCE

This Agreement shall be effective **July 1, 2022** through **June 30, 2023**. This Agreement shall remain in effect unless terminated sooner in accordance with the terms and conditions herein.

CONTRACT COSTS

Grantee shall be paid up to a maximum of **\$116,600.00** under the total contract for costs authorized under this Agreement, based on funding availability and/or Grantee performance. All expenditures and activities must be in accordance with all attachments herein and must occur within the grant period. Funding may not be used for purposes contrary to applicable federal, state, and local laws.

STATE FISCAL YEAR BILLING DEADLINE

DWS must receive billing for services for the month of June no later than July 15th, due to the DWS fiscal year end. Billings submitted after this date may be denied.

ATTACHMENTS

Attachment A: State of Utah's Standard Terms and Conditions for Services

Attachment B: DWS Interagency Supplemental Terms and Conditions

Attachment C: Scope of Work, Contract Budget, and Contract Payments

Attachment D: Federal Subaward Funding and Reporting Requirements

RATIFICATION

It is understood and agreed that the effective date of this Agreement is the date of commencement of services as provided in the Period of Performance paragraph above, and that any and all appropriate costs within budget incurred by Grantee between said effective date and the date on which this Agreement is fully executed are hereby approved and ratified for payment.

CONTACTS

Department of Workforce Services	GRANTEE
Maritza Erickson	Alisha Johnson
Program Manager	Deputy Director of Finance
140 East 300 South	P.O. Box 140241
Salt Lake City, UT 84111	Salt Lake City, UT 84114
385-522-5659	801-578-3969
maritzaerickson@utah.gov	alishaj@utcourts.gov

SIGNATURE AND ACKNOWLEDGEMENT

By signing below, the following officials acknowledge that they understand and agree to all of the terms and responsibilities set forth herein and cause this Agreement to be executed.

ATTEST: UTAH ADMINISTRATIVE OFFICE OF THE COURTS

Signature of Brody Arishita, Chief Information Officer Date

Signature of Shane Bahr, District Court Administrator Date

Signature of Karl Sweeny, Finance Director Date

ATTEST: UTAH DEPARTMENT OF WORKFORCE SERVICES

Casey Cameron, Executive Director Date

ATTACHMENT A
STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR SERVICES

000062

This is for a contract between Government Entities within the State of Utah for services (including professional services) meaning the furnishing of labor, time, or effort by a contractor. These terms and conditions may only be used when both parties are government entities or political subdivisions as defined in the Utah Government Immunity Act.

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a) "Confidential Information" means information that is deemed as confidential under applicable state and federal laws, including personal information. The State Entity reserves the right to identify, during and after this Purchase Order, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - b) "Contract" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" may include any purchase orders that result from the parties entering into this Contract.
 - c) "Contract Signature Page(s)" means the State of Utah cover page(s) that the State Entity and Contractor sign.
 - d) "Contractor" means the individual or entity delivering the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - e) "Services" means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services shall include, but not limited to, all of the deliverable(s) that result from Contractor performing the Services pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.
 - f) "Proposal" means Contractor's response to the State Entity's Solicitation.
 - g) "Solicitation" means the documents used by the State Entity to obtain Contractor's Proposal.
 - h) "State Entity" means the department, division, office, bureau, agency, or other organization identified on the Contract Signature Page(s).
 - i) "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - j) "Subcontractors" means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Services performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by the State Entity to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah and federal auditors, and State Entity staff, access to all such records.
5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** INTENTIONALLY DELETED
6. **CONFLICT OF INTEREST:** INTENTIONALLY DELETED
7. **INDEPENDENT CONTRACTOR:** Contractor's legal status is that of an independent contractor, and in no manner shall Contractor be deemed an employee or agent of the State Entity or the State of Utah, and therefore is not entitled to any of the benefits associated with such employment. Contractor, as an independent contractor, shall have no authorization, express or implied, to bind the State Entity or the State of Utah to any agreements, settlements, liabilities, or understandings whatsoever, and agrees not to perform any acts as an agent for the State Entity or the State of Utah. Contractor shall remain responsible for all applicable federal, state, and local taxes, and all FICA contributions.
8. **INDEMNITY:** Both parties to this agreement are governmental entities as defined in the Utah Governmental Immunity Act (Utah Code Ann. 63G-7-101 et. seq.). Nothing in this Contract shall be construed as a waiver by either or both parties of any rights, limits, protections or defenses provided by the Act. Nor shall this Contract be construed, with respect to third parties,

as a waiver of any governmental immunity to which a party to this Contract is otherwise entitled. Subject to and consistent with the Act, each party will be responsible for its own actions or negligence and will defend against any claims or lawsuit brought against it. There are no indemnity obligations between these parties.

9. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the work place. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
10. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
11. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
12. **TERMINATION:** Unless otherwise stated in this Contract, this Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and is subject to the remedies listed below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by either party, upon sixty (60) days written termination notice being given to the other party. The State Entity and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved Services ordered prior to date of termination.

Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the State Entity or the State of Utah is limited to full payment for all Services properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract.

13. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the State Entity, if the State Entity reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the State Entity's ability to pay under this Contract. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, the State Entity will reimburse Contractor for the Services properly ordered until the effective date of said notice. The State Entity will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

14. **SUSPENSION OF WORK:** Should circumstances arise which would cause the State Entity to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by written notice. Contractor's responsibilities may be reinstated upon advance formal written notice from the State Entity.
15. **SALES TAX EXEMPTION:** The Services under this Contract will be paid for from the State Entity's funds and used in the exercise of the State Entity's essential functions as a State of Utah entity. Upon request, the State Entity will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the State Entity's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.
16. **INSURANCE:** INTENTIONALLY DELETED
17. **WORKERS COMPENSATION INSURANCE:** Contractor shall maintain during the term of this Contract, workers' compensation insurance for all its employees as well as any Subcontractor employees related to this Contract. Worker's compensation insurance shall cover full liability under the worker's compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction. Contractor acknowledges that within thirty (30) days of contract award, Contractor must submit proof of certificate of insurance that meets the above requirements.
18. **ADDITIONAL INSURANCE REQUIREMENTS:** INTENTIONALLY DELETED
19. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents, and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the State Entity and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the State of Utah

Division of Purchasing and General Services, all of which must be in accordance with GRAMA, Contractor also agrees that the Contractor's Proposal to the Solicitation will be a public document, and copies may be given to the public as permitted under GRAMA. The State Entity and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.

20. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State Entity, except as to latent defects or fraud.

21. **ACCEPTANCE AND REJECTION:** The State Entity shall have thirty (30) days after delivery of the Services to perform an inspection of the Services to determine whether the Services conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Services by the State Entity.

If Contractor delivers nonconforming Services, the State Entity may, at its option and at Contractor's expense: (i) return the Services for a full refund; (ii) require Contractor to promptly correct or reperform the nonconforming Services subject to the terms of this Contract; or (iii) obtain replacement Services from another source, subject to Contractor being responsible for any cover costs.

22. **INVOICING:** Contractor will submit invoices within thirty (30) days of Contractor's performance of the Services to the State Entity. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the State Entity will be those prices listed in this Contract, unless Contractor offers a prompt payment discount within its Proposal or on its invoice. The State Entity has the right to adjust or return any invoice reflecting incorrect pricing.

23. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the State Entity, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the State Entity within ten (10) business days of receipt of final payment, shall release the State Entity and the State of Utah from all claims and all liability to the Contractor. The State Entity's payment for the Services shall not be deemed an acceptance of the Services and is without prejudice to any and all claims that the State Entity or the State of Utah may have against Contractor.

24. **TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence. Contractor shall be liable for all reasonable damages to the State Entity and the State of Utah, and anyone for whom the State of Utah may be liable, as a result of Contractor's failure to timely perform the Services required under this Contract.

25. **CHANGES IN SCOPE:** Any changes in the scope of the Services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of Services.

26. **PERFORMANCE EVALUATION:** The State Entity may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.

27. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract. Contractor shall be liable to the State Entity and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party claims (i.e. another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.

28. **REVIEWS:** The State Entity reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.

29. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the State Entity.

30. **REMEDIES:** Any of the following events will constitute cause for the State Entity to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The State Entity may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State Entity may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the State Entity or the State of Utah; or (v) demand a full refund of any payment that the State Entity has made to Contractor under this Contract for Services that do not conform to this Contract.

31. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control. The State Entity may terminate this Contract after determining such delay will prevent successful performance of this Contract.

32. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the State Entity of any potential or actual misuse or misappropriation of Confidential Information.
- Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the State Entity and the State of Utah, including anyone for whom the State Entity or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.
- Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the State Entity or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.
33. **PUBLICITY:** Contractor shall submit to the State Entity for written approval all advertising and publicity matters relating to this Contract. It is within the State Entity's sole discretion whether to provide approval, which must be done in writing.
34. **CONTRACT INFORMATION:** INTENTIONALLY DELETED.
35. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the State Entity and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the State Entity or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability such limitations of liability will not apply to this section.
36. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The State Entity and Contractor each recognizes that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All deliverables, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically created or manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the State Entity.
37. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
38. **ATTORNEY'S FEES:** INTENTIONALLY DELETED
39. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
40. **DISPUTE RESOLUTION:** INTENTIONALLY DELETED.
41. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limits the rights of the State Entity or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
42. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the State Entity's right to enforce this Contract with respect to any default of this Contract or defect in the Services that has not been cured.
43. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
44. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

(Revision Date: 12 December 2019)

ATTACHMENT B
DEPARTMENT OF WORKFORCE SERVICES
INTERAGENCY SUPPLEMENTAL TERMS AND CONDITIONS

1. CONFLICT OF INTEREST:

- a. CONTRACTOR certifies, through the execution of the Contract, that none of its owners, directors, officers, or employees are employees of DWS. CONTRACTOR will not hire or subcontract with any person having such conflicting interest(s).
- b. CONTRACTOR will notify DWS immediately upon learning of such a conflict and shall take immediate action to cure the conflict in accordance with DWS' direction.
- c. CONTRACTOR certifies, through the execution of the Contract that none of its owners, directors, officers, or employees working under this Contract, are relatives of an employee of DWS. A relative is defined as: spouse, child, step-child, parent, sibling, aunt, uncle, niece, nephew, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent or grandchild.
- d. CONTRACTOR shall not use Contract funds to make any payments to an organization which has in common with CONTRACTOR either: a) owners or partners who directly or indirectly own ten percent (10%) or more of the voting interest of the organization; and/or b) directors, officers or others with authority to establish policies and make decisions for the organization.

2. **CITING WORKFORCE SERVICES IN PROGRAM PROMOTION:** CONTRACTOR agrees to give credit to Workforce Services for funding in all written and verbal promotion, marketing or discussion of this program, including but not limited to brochures, flyers, informational materials, paid advertisements, and social media. All formal promotion, marketing (paid or otherwise), or public information programs will be coordinated with the assigned Public Information Officer for Workforce Services. It is within DWS's sole discretion whether to approve the advertising and publicity.

3. **IMPOSITION OF FEES:** CONTRACTOR will not impose any fees upon clients provided services under this Contract except as authorized by DWS. The State of Utah and DWS will not allow CONTRACTOR to charge end users electronic payment fees of any kind.

4. **HUMAN-SUBJECTS RESEARCH:** CONTRACTOR shall not conduct non-exempt human-subjects research, as defined by 45 CFR part 46, involving employees of DWS or individuals receiving services (whether direct or contracted) from DWS. Program reporting and evaluation are not considered human-subjects research.

5. CONTRACTOR ASSIGNMENT AND SUBCONTRACTORS

- a. Assignment: Notwithstanding DWS's right to assign the rights or duties hereunder, this Contract may not be assigned by CONTRACTOR without the written consent of DWS. Any assignment by CONTRACTOR without DWS's written consent shall be wholly void.
- b. If CONTRACTOR enters into subcontracts the following provisions apply:
 - i. Duties of Subcontractor: Regardless of whether a particular provision in this Contract mentions subcontractor, a subcontractor must comply with all provisions of this Contract including, insurance requirements and the fiscal and program requirements. CONTRACTOR retains full responsibility for the Contract compliance whether the services are provided directly or by a subcontractor.
 - ii. Provisions Required in Subcontracts: If CONTRACTOR enters into any subcontracts with other individuals or entities and pays those individuals or entities for such goods or services with federal or state funds, CONTRACTOR must include provisions in its subcontracts regarding the federal and state laws identified in this Contract, if applicable ("Contractor's Compliance with Applicable Laws; Cost Accounting Principles and Financial Reports"), as well as other laws and grant provisions identified in 45 C.F.R. §92.36(i).

6. MONITORING:

- a. DWS shall have the right to monitor CONTRACTOR'S performance under this Agreement. Monitoring of CONTRACTOR'S performance shall be at the complete discretion of DWS which will include but is not limited to CONTRACTOR'S fiscal operations, and the terms, conditions, attachments, scope of work, and performance requirements of this Agreement. Monitoring may include, but is not limited to, both announced and unannounced site visits, desk audit, third party monitoring, expenditure document review or video/phone conferencing. Any onsite monitoring will take place during normal business hours.
- b. If it is discovered that CONTRACTOR is in default (not in compliance with the Agreement), CONTRACTOR may be subject to sanctions which may include warnings, audits, temporary suspension of payments, termination, demand for the return of funds and or suspension/debarment from participation in future DWS grants and contracts. Default may also result in the cancellation of other agreements between CONTRACTOR and DWS.
- c. CONTRACTOR understands that DWS may conduct customer-satisfaction surveys. CONTRACTOR agrees to cooperate with all DWS-initiated customer feedback.
- d. EVALUATIONS: DWS may conduct reviews, including but not limited to:
 - i. PERFORMANCE EVALUATION: A performance evaluation of Grantee's and Subcontractors' work.
 - ii. REVIEW: DWS may perform plan checks, plan reviews, other reviews, and comment upon the Services of Grantee. Such reviews do not waive the requirement of Grantee to meet all of the terms and conditions of this Agreement.

- 7. **CODE OF CONDUCT** (attached if applicable): CONTRACTOR agrees to follow and enforce DWS's Code of Conduct, Utah Administrative Code, R982-601-101 et seq.

8. COMPLIANCE WITH GENERALLY APPLICABLE STATE AND FEDERAL LAWS:

- a. At all times during this Contract, CONTRACTOR, and all services performed under this Contract, will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations.
- b. CONTRACTOR is required to comply with all anti-discrimination and drug-free workplace laws, and all laws governing research involving human subjects. If CONTRACTOR is receiving federal funds under this Contract the following federal laws may apply: Equal Opportunity Employer Executive Order, the Davis-Bacon Act, the Hatch Act, the Copeland "Anti-Kickback" Act, the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, the Clean Air Act, the Federal Water Pollution Control Act, the Byrd Anti-Lobbying Amendment, and the Debarment and Suspension Executive Orders.
CONTRACTOR shall comply with these laws and regulations to the extent they apply to the subject matter of this Contract.
- c. By accepting this Contract, the CONTRACTOR assures that it has the ability to comply with the nondiscrimination and equal opportunity provisions of the following laws and shall remain in compliance with such laws for the duration of the Contract:
 - i. Section 188 of the Workforce Innovation and Opportunity Act (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or against beneficiaries, applicants, and participants on the basis of either citizenship or participation in any WIOA Title I-financially assisted program or activity;
 - ii. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color, and national origin;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;

- iv. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
 - v. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in education programs.
- d. CONTRACTOR also assures that it will comply with 29 CFR part 38 and all other regulations implementing the laws listed above. The CONTRACTOR understands that the United States has the right to seek judicial enforcement of this assurance.
 - i. If applicable, CONTRACTOR will provide an explanation of the client's rights and protections under 29 CFR Part 38, including displaying DWS' Equal Opportunity is the Law poster. If individual client files are maintained CONTRACTOR will also provide a copy of DWS' Equal Opportunity Notice to the client and maintain a copy in the client file.
 - ii. The CONTRACTOR shall comply with WIOA guidance regarding services and access for persons with limited English proficiency, to the extent they apply to the subject matter of this agreement. Specific guidance is provided at Part IV, Department of Labor Federal Register/Volume 68, No. 103, issued Thursday, May 29, 2003, and Department of Health and Human Services Federal Register/Volume 65, No. 169, August 30, 2000 and Department of Health and Human Services Federal Register Volume 68, Number 153, August 8, 2003.
- 9. **NOTIFICATION OF THE INTERNAL REVENUE SERVICE:** It is DWS's policy to notify the Internal Revenue Service of any known violations of IRS regulations.
- 10. **ACCOUNTS AND PAYMENTS AT TERMINATION:** Upon termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination. In no event shall DWS be liable to CONTRACTOR for compensation for any good or service neither requested nor accepted by DWS. In no event shall DWS's exercise of its right to terminate this Contract relieve the CONTRACTOR of any liability to DWS for any damages or claims arising under this Contract.
- 11. **LAWS AND REGULATIONS:** The Grantee shall ensure that all supplies, services, equipment, and construction furnished under this Agreement complies with all applicable Federal, State, and local laws and regulations, including obtaining applicable permits, licensure and certification requirements. Grantees receiving federal pass-through funding shall comply with applicable 2 CFR 200 (Uniform Administrative Requirements and Cost Principles).
- 12. **WARRANTY:** Grantee warrants, represents and conveys full ownership and clear title to the goods provided under this Agreement. Grantee warrants that: (a) all services and goods shall be provided in conformity with the requirements of this Agreement by qualified personnel in accordance with generally recognized standards; (b) all goods furnished pursuant to this Agreement shall be new and free from defects; (c) goods and services perform according to all claims that Grantee made in its Proposal; (d) goods and services are suitable for the ordinary purposes for which such goods and services are used; (e) goods and services are suitable for any special purposes identified in the Grantee's Proposal; (f) goods are properly designed and manufactured; and (g) goods create no harm to persons or property. Grantee warrants and assumes responsibility for all goods that it sells to the State under this Agreement for a period of one year, unless a longer period is specified elsewhere in this Agreement. Grantee acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State apply to this Agreement. Product liability disclaimers and warranty disclaimers are not applicable to this Agreement and are deemed void. Remedies available to the State include but are not limited to: Grantee will repair or replace goods and services at no charge to the State within ten days of written notification. If the repaired or replaced goods and services are inadequate or fail their essential purpose, Grantee will refund the full amount of any

payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State may otherwise have.

13. **TIME OF THE ESSENCE:** Services shall be completed by the deadlines stated in this Agreement. For all Services, time is of the essence. Grantee is liable for all damages to DWS, the State, and anyone for whom the State may be liable as a result of Grantee's failure to timely perform the Services.
14. **BILLINGS AND PAYMENTS:** Payments to CONTRACTOR will be made upon receipt of itemized billing for authorized service(s) supported by appropriate documentation. Billings and claims for services must be received within thirty (30) days after the last date of service for the period billed including the final billing, which must be submitted within thirty (30) days after contract termination or they may be delayed or denied. Billing for services for the month of June must be received no later than July 15th due to DWS's fiscal year end. Billings submitted after this date may be denied. DWS will not allow claims for goods or services furnished by CONTRACTOR which are not specifically authorized by this contract. DWS has the right to adjust or return any invoice reflecting incorrect pricing.
15. **PAYMENT RATES (Does not apply to contracts with DWS set rates or fee-for-performance rates):** Initial payment rates for negotiated contracts may be calculated based on actual expenditures for prior period, available budget and changes in the type or quality of service. The rates may be adjusted up or down during the Contract term in accordance with prior paid actual costs or a review of current costs verified by audit or fiscal review. Such a rate adjustment may be retroactive to the beginning of the Contract. Rates for contracts awarded as a result of the competitive bidding process will not be changed during the Contract term unless rate change is specifically stated in the contractual terms.
16. **PAYMENT WITHHOLDING:** CONTRACTOR agrees that the reporting and record keeping requirements specified in this Contract are a material element of performance and that if, in the opinion of DWS, CONTRACTOR'S record keeping practices and/or reporting to DWS are not conducted in a timely and satisfactory manner, DWS may withhold part or all payments under this or any other Contract until such deficiencies have been remedied. In the event of the payment(s) being withheld, DWS agrees to notify CONTRACTOR of the deficiencies that must be corrected in order to bring about the release of withheld payment.
17. **OVERPAYMENT/AUDIT EXCEPTIONS/DISALLOWANCES:** CONTRACTOR agrees that if during or subsequent to the CONTRACTOR'S CPA audit or DWS determines that payments were incorrectly reported or paid, DWS may amend the Contract and adjust the payments. To be eligible for reimbursement, CONTRACTOR expenditures must be adequately documented. Upon written request, CONTRACTOR will immediately refund to DWS any overpayments, as determined by audit or DWS. CONTRACTOR further agrees that DWS shall have the right to withhold any or all subsequent payments under this or other contracts with CONTRACTOR until recoupment of overpayment is made.
18. **PRICE REDUCTION FOR INCORRECT PRICING DATA:** If any price, including profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract was increased by any significant sum because CONTRACTOR furnished cost or pricing data (e.g., salary schedules, reports of prior period costs) which was not accurate, complete and current, the price or cost shall be reduced accordingly. The Contract may be modified in writing as necessary to reflect such reduction, and amounts overpaid shall be subjected to overpayment assessments. Any action DWS may take in reference to such price reduction shall be independent of, and not be prejudicial to, DWS'S right to terminate this Contract.
19. **FINANCIAL/COST ACCOUNTING SYSTEM:** CONTRACTOR agrees to maintain a financial and cost accounting system in accordance with accounting principles generally accepted in

the United States of America. An entity's accounting basis determines when transactions and economic events are reflected in its financial statements. An entity may record its accounting transactions and events on a cash basis, accrual basis, or modified accrual basis; however the cash method of accounting is not appropriate for governmental entities. CONTRACTOR further agrees that all program expenditures and revenues shall be supported by reasonable documentation (e.g., vouchers, invoices, receipts), which shall be stored and filed in a systematic and consistent manner. CONTRACTOR further agrees to retain and make available to independent auditors, State and Federal auditors, and program and contract reviewers all accounting records and supporting documentation for a minimum of six (6) years after the final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. CONTRACTOR further agrees that, to the extent it is unable to reasonably document the disposition of monies paid under this Contract, it is subject to an assessment for over-payment.

20. DWS COST PRINCIPLES FOR COST REIMBURSEMENT CONTRACTS:

- a. Federal cost principles determine allowable costs in DWS Contracts. CONTRACTOR may locate the Federal Cost Principles applicable to its organization by searching the appropriate federal government websites.
- b. Compliance with Federal Cost Principles: For CONTRACTOR'S convenience, DWS provides Table 1 below, "Cost Principles," as a reference guide to the applicable cost principles. However, the information in this table is not exhaustive, and CONTRACTOR understands that it is obligated to seek independent legal and/or accounting advice. As shown in Table 1, "Cost Principles," the principles applicable to a particular CONTRACTOR depend upon CONTRACTOR'S legal status.

Table 1: Cost Principles

Subrecipient	Federal Cost Principles
State/Local/Indian Tribal Governments	2 CFR 200 Subpart E
College or University	
Non-Profit Organization	
For-Profit Entity	48 CFR Part 31.2

- c. Compensation for Personal Services - Additional Cost Principles:
In addition to the cost principles in the federal circulars concerning compensation for personal services, the following cost principles also apply:
 - i. The portion of time a person devotes to a program should be disclosed in the budget as a percent of 40 hours per week.
 - ii. Employees who are compensated from one or more contracts or from programmatic functions must maintain time reports, which reflect the distribution of their activities.
 - iii. If total work time exceeds 40 hours and CONTRACTOR wants reimbursement for the time devoted to DWS programs over 40 hours, the following two conditions must be met: 1) A perpetual time record must be maintained and 2) Prior written approval must be obtained from DWS'S Finance- Contracting Division.
 - iv. Compensation for Personal Expenses: DWS will not reimburse CONTRACTOR for personal expenses. For example spouse travel when the travel costs of the spouse are unrelated to the business activity, telecommunications and cell phones for personal use, undocumented car allowances, payments for both actual costs of meals and payments for per diem on the same day, and business lunches (not connected with training).
- d. Third-Party Reimbursement and Program Income: CONTRACTOR is required to pursue reimbursement from all other sources of funding available for services performed under this Contract. Other sources of funding include, but are not limited to, third party reimbursements and program income. In no instance shall any combination of other sources of funding and billings to DWS be greater than

"necessary and reasonable costs to perform the services" as supported by audited financial records. Collections over and above audited costs shall be refunded to DWS.

21. **ADMINISTRATIVE EXPENDITURES:** DWS will reimburse administrative expenses as allowed by the budget terms of this agreement. CONTRACTOR with a federally approved Negotiated Indirect Cost Rate Agreement (NICRA) must provide DWS with a copy of their approval letter from the federal cognizant agency along with information on the base(s) used to distribute indirect costs.
22. **CHANGES IN BUDGET (cost reimbursement contracts only):** The budget attached hereto shall be the basis for payment. CONTRACTOR may not make any adjustment in budgeted funds from Category III, "Program Expenses" to either Category I, "Indirect Expenses" or Category II, "Direct Administrative Expenses" or between Categories I and II, without prior written approval by DWS. Expenditures in excess of those budgeted in either Category I or II may be considered questioned costs. Resolution of such questioned costs will normally result in a request that such excesses be refunded to DWS. CONTRACTOR may, however, shift between either Category I or II to Category III with prior approval from DWS. Expenditures in excess of those budgeted in Category III will not normally result in questioned costs unless restrictions have been placed on subcategories within this major category. When the grant restricts expenditures within defined subcategories, any unapproved excess will be considered a questioned cost.
23. **WORKFORCE SERVICES JOB LISTING:** CONTRACTOR must post employment opportunities with DWS for the duration of the Contract.
24. **GRIEVANCE PROCEDURE:** CONTRACTOR agrees to establish a system whereby recipients of services provided under this Contract may present grievances about the operation of the program as it pertains to and affects said recipient. CONTRACTOR will advise recipients of their right to present grievances concerning denial or exclusion from the program, or operation of the program, and of their right to a review of the grievance by DWS. CONTRACTOR will advise applicants in writing of rights and procedures to present grievances. In the event of a grievance, CONTRACTOR will notify DWS contract owner of the grievance and its disposition of the matter.
25. **FINANCIAL REPORTING AND AUDIT REQUIREMENTS:** CONTRACTOR shall comply with all applicable federal and state laws and regulations regarding financial reporting and auditing, including but not limited to 2 CFR 200, Subpart F; Utah Code: 51-2a-201.5, Utah Code: 53A-1a-507. Utah Admin. Code Rule R123-5, the *State of Utah Compliance Audit Guide* (SCAG). Further information on financial reporting and audit requirements is available at auditor.utah.gov.
26. **PROTECTION AND USE OF CLIENT RECORDS:** The use or disclosure by any party of any personally identifiable information concerning a recipient of services under this contract, for any purpose not directly connected with the administration of DWS'S or CONTRACTOR'S responsibilities with respect to this contract is prohibited except as required or allowed by law.
CONTRACTOR shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. CONTRACTOR shall indemnify, hold harmless, and defend DWS and the State of Utah, including anyone for whom DWS or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by CONTRACTOR or anyone for whom the CONTRACTOR is liable.
This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.

ATTACHMENT C

Scope of Work, Contract Budget, and Contract Payments

Eviction Expungements

I. Scope of Work

A. Purpose

During the 2022 General Legislative Session, the Legislature passed House Bill 359 (HB 359) providing requirements and funding to address expungement of eviction records. This is anticipated to be a federal transfer of funds consistent with the fiscal note for HB 359 (<https://le.utah.gov/lfa/fnotes/2022/HB0359S03.fn.pdf>). The funding will cover general operating costs to do the work mandated in HB 359.

B. Grantee Responsibilities

1. Grantee will process each petition-based eviction expungement. In addressing each petition, Grantee will assess whether the petition qualifies under the new statute (see Utah Code § 78B-6-853). This is new work for Grantee requiring an after-the-fact legal review of case documents to assess compliance and eligibility under the statute criteria.
2. Grantee possesses vast knowledge of statute and court processes to enable careful review of pleadings and other eviction filings under this new type of expungement.
3. Grantee will provide the services set forth in statute.

C. Outcomes/Deliverables

1. Grantee projects that approximately 1% (700) of the annual expungements will need clerical/judicial processing.
2. Judicial review, determination of eligibility, and (if eligible) issuing the expungement order, as outlined in statute.

D. Reporting

1. Grantee will report on the outcomes and services provided monthly. The report will include but is not limited to the following:
 - i. Number of households served (processed) each month.
 - ii. Number of petitions filed each month.
 - iii. Number of petitions denied each month.
 - iv. Number of petitions approved each month.
2. The reported information must be broken down by area of the state.

E. Monitoring

Grantee shall permit DWS the right of compliance reviews which may include but is not limited to, desk reviews, site visits, technical assistance, and expenditure reviews.

II. Contract Budget

BUDGET	
Service	Expense
Salaries	\$37,600.00
Professional Fees	\$79,000.00
Total	\$116,600.00

III. Contract Payments

- A. Claims should be submitted no more frequently than monthly, or less frequently than quarterly.
- B. For services pursuant to this contract, invoices shall be sent electronically to the Fiscal Grant Manager, currently Brittany Hardy at bhardy@utah.gov at the Department of Workforce Services (DWS).
- C. Supporting documentation may be required at the request of DWS. Supporting documentation may include but is not limited to payroll reports and receipts.
- D. Processing time for payments is determined by accuracy of invoices and approval by the DWS Finance Division.
- E. Any budget change request must be in writing and approved by DWS.



ATTACHMENT D

000074

State of Utah
Department of Workforce Services
**FEDERAL SUBAWARD FUNDING AND
REPORTING REQUIREMENTS**

Instructions: Complete the *Subrecipient Information, Certification* and additional applicable information below. **Certification on page two is only required to be completed on the initial award.** For State Government Entities and Component Units of the state, only the Federal Award Information and Subaward Information sections are required to be completed.

SUBRECIPIENTS awarded \$30,000 or more in federal funds shall comply with The Federal Funding Accountability and Transparency Act (FFATA), P.L. 109-282 (and as amended by section 6202 (a) of P.L. 110-252).

FEDERAL AWARD INFORMATION (Completed by DWS Fiscal Grant Manager)

CFDA# and Name: 21.023 and Emergency Rental Assistance

Federal Award Identification Number (FAIN): ERA0165

Federal Awarding Agency: U.S. Department of Treasury

Federal Award Issue Date: 01/12/2021 Is Federal Award for R&D? ☐ YES ☒ NO

SUBAWARD INFORMATION (Completed by DWS Contract Owner/Contract Analyst/Fiscal Grant Manager)

Agreement number: 22-DWS-0260

Project name and description:

Eviction Expungements: The funding will cover general operating costs to do the work mandated in HB 359. The Utah District Courts will process each petition-based eviction expungement. In addressing each petition, the Court will assess whether the petition qualifies under the new statute. The Utah District Courts will process each petition-based eviction expungement. In addressing each petition, the Court will assess whether the petition qualifies under the new statute.

Start date of award: 07/01/2022 End date of award: 06/30/2023

Amount of federal funds obligated by this action: \$116,600.00

Total amount of federal funds obligated: \$116,600.00

Total amount of the federal award committed: \$116,600.00

Subrecipient has a: Federal NICRA: ☐ Yes ☒ No **-OR-** de Minimis: ☐ Yes ☒ No

Indirect Cost Rate: _____

Indirect Cost Rate Base:

SUBRECIPIENT INFORMATION

UEI number: FEYPTAJCLUT7

Name of Subrecipient: Utah Administration of the Courts

Business Address: P.O. Box 140241

City: Salt Lake City State: UT Zip+4: 84114

Subrecipient principal place of performance (if different from above)

Address: _____

City: _____ State: _____ Zip+4: _____

- (1) 80 percent or more of your annual gross revenues in U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements; **and**
- (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?

☒ YES: Continue, complete Executive Compensation and Attestation below

Executive Compensation

	Name	Title	Total Compensation Level*
1			
2			
3			
4			
5			

- 1) Salary and bonus.
- 2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards 2 CFR 200 (Revised 2004) (FAS 123R), Shared Based Payments.
- 3) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- 4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- 5) Above-market earnings on deferred compensation which is not tax-qualified.
- 6) Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

ATTESTATION

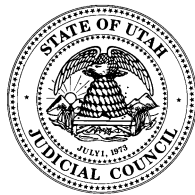
Date:

Name and Title:

Auxiliary aids (accommodations) and services are available upon request to individuals with disabilities by calling 801-526-9240. Individuals who are deaf, hard of hearing, or have speech impairments may call Relay Utah by dialing 711. Spanish Relay Utah: 1-888-346-3162.

Tab 5

Agenda



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

October 11, 2022

Ronald B. Gordon, Jr.
State Court Administrator
Neira Siaperas
Deputy State Court Administrator

MEMORANDUM

TO: Judicial Council

FROM: Craig Bunnell, Chair, Board of Juvenile Court Judges

RE: Report to the Judicial Council

Since the last report to the Judicial Council in May 2022, the Board of Juvenile Court Judges has initiated or continued working on:

1. Judicial Weighted Caseload study

The Board established a standing Juvenile Judicial Workload committee which held its first meeting on May 2, 2022. The committee has selected and reviewed judicial workload case weights most impacted by the pandemic or by legislative and other changes in judicial work. The selected case weights are being updated to accurately reflect the current workload of juvenile court judges. The committee and the juvenile court data team are currently finalizing the revised judicial workload survey that will reflect updated judicial processes and include time needed for virtual and hybrid hearings. The Juvenile Judicial Workload committee will be the first workload study in the courts to have updated data that includes case weights for virtual and hybrid hearings. This workload study will allow the juvenile court to have accurate data on an annual basis.

2. Racial, Equity and Fairness (REF) workgroup

The Utah Juvenile Court Racial, Equity and Fairness (REF) workgroup (formerly known as the Racial and Ethnic Disparities initiative) has been working to secure research partners for phase II of the Board's Fairness and Accountability project. To secure access to resources and appropriate research partners who can do complex juvenile court analysis, we have proposed integrating our efforts under the Office of Fairness and Accountability umbrella. We will have an update on these efforts in the near future.

The workgroup identified and prioritized the need for enhanced processes in the areas of cultural competency, expungement education, interpreter access, and standardization of processes to mitigate the potential for bias. The workgroup has partnered with Dr. David Parker and the

**The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.**

Education Department to expand the cultural competency curriculum for court staff. The workgroup spearheaded the creation and distribution of an expungement process brochure and the dissemination of information regarding the availability of expungement clinics. The workgroup is currently collaborating with the Language Access Committee to add verbiage in five additional languages to the Preliminary Inquiry letter with instructions for families to contact the court if an interpreter is needed. The workgroup also worked with the probation department to create standards for photographs of youth that are uploaded into the case management system to mitigate potential bias from the background of the photograph or the clothing the youth is wearing. These standards have been implemented within the probation department and the Division of Juvenile Justice and Youth Services has also agreed to implement these standards.

3. Assessment of Juvenile Defense

Juvenile Court judges and staff will participate in the upcoming assessment by The Gault Center to evaluate access to counsel and quality of legal representation for Utah youth in delinquency cases. The Center has conducted similar assessments in 28 states to date. There are six components to the assessment:

1. Access to Counsel and Quality of Representation
2. Indigent Defense Structural Overview
3. System Impacts to Justice and Fairness
4. Promising Practices
5. Recommendations for the State
6. Recommendations for Local Systems

The Utah assessment will involve select counties and include court observations and interviews with judges, administrators, district leadership and employees, and other stakeholders. Judges will be able to opt in or out of the interviews, particularly if there are concerns about discussing specific issues regarding juvenile defense counsel.

Tab 6

Agenda



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

October 12, 2022

Ronald B. Gordon, Jr.
State Court Administrator
Neira Siaperas
Deputy State Court Administrator

MEMORANDUM

TO: Judicial Council

FROM: Neira Siaperas, Deputy State Court Administrator

RE: Senior Judge Appointment

Judge Renee Jimenez will retire on December 15, 2022 and she has applied to be an Active Senior Judge. As required by [UCJA Rule 11-201\(1\)\(C\)\(ix\)](#), attached are Judge Jimenez's Active Senior Judge application and the most recent JPEC Performance Evaluation prepared in 2022.

Judge Jimenez does not have any outstanding complaints after a finding of reasonable cause with the Judicial Conduct Commission or the Utah Supreme Court. Judge Jimenez has met all other Active Senior Judge qualifications and requirements found in Rule 11-201.

The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.

Active Senior Judge Application

Active senior judge status allows you to hear and determine cases and perform weddings. The declarations on this form reflect the qualifications established by Code of Judicial Administration Rules 11-201 and 11-203. Please review the requirements in the rule before completing this form.

Your application will be considered first by the Judicial Council and then by the Supreme Court. You will receive a copy of the signed Supreme Court Order and an Oath of Office form if the Supreme Court certifies you.

PLANNED LEAVES OF ABSENCE: A judge applying for active senior judge status must elect inactive status during any planned leaves of absence if it could interfere with the judge's ability to fully comply with annual education requirements or the judge's ability to meet the judge's minimum senior judge service days.

NAME: Please provide your name below.

Renee Jimenez

RETIREMENT DATE: Please provide your retirement date below.

MM DD YYYY

12 / 15 / 2022

AGE 75: Please provide the year you will or did turn 75. Please do NOT provide your actual birth date.

2039

QUALIFICATIONS FOR OFFICE: I hereby apply for the office of ACTIVE Senior Judge and declare as follows (check ALL that apply): *

- ☒ 1) I was retained in the last election in which I stood for election.
- ☒ 2) I voluntarily resigned from judicial office, retired, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- ☒ 3) I demonstrate appropriate ability and character.
- ☒ 4) I am admitted to the practice of law in Utah, but I do not practice law.
- ☒ 5) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- ☒ 6) I am a current resident of Utah and available to take cases.
- ☒ 7) I am physically and mentally able to perform the duties of judicial office.
- ☒ 8) I maintain familiarity with current statutes, rules, case law, court case management systems, such as CORIS for district courts, and CARE for juvenile courts, Workspace and remote hearing technology.
- ☒ 9) I will satisfy the education requirements of an active judge.
- ☒ 10) I will attend the Annual Judicial Conference (appellate/district/juvenile) or Annual Justice Court Conference (justice).
- ☒ 11) I will accept assignments at least two days per calendar year, subject to being called.
- ☒ 12) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.
- ☒ 13) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been recommended for retention regardless of whether the evaluation was conducted for self-improvement or certification;
- ☒ 14) I continue to meet the requirements for judicial retention as those requirements are determined by the Judicial Council.
- ☒ 15) I will undergo a performance evaluation as required following an initial term as an active senior judge.
- ☒ 16) I will take and subscribe an Oath of Office.
- ☒ 17) I was not removed from office or involuntarily retired on grounds other than disability.
- ☒ 18) I was not suspended during my final term of office or final six years in office, whichever is greater.

- ☒ 19) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
- ☒ 20) I have not been subject to any order of discipline for conduct as a senior judge.
- ☒ 21) I understand that if I have had any orders of discipline against me by the Supreme Court, I must provide those to the Judicial Council.
- ☒ 22) I am not aware of a complaint against me pending before the Supreme Court or Judicial Conduct Commission, after a finding of reasonable cause.
- ☒ 23) I declare there are no criminal charges, not including infractions, pending against me.
- ☐ 24) Justice Court judges only - I have been in office for at least five years.
- ☐ 25) Justice Court judges only - I comply with the restrictions on secondary employment provided by the Utah Code.
- ☐ Other:

IF APPLICABLE, please explain why you DID NOT check any of QUALIFICATIONS the boxes above. Please include the qualification number.

.....

JUDICIAL PERFORMANCE EVALUATION: I further declare as follows (check ALL apply): *

- ☐ A) Appellate judges only - I have circulated not more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year.
- ☐ B) Appellate judges only - I have achieved a final average time to circulation of a principal opinion of not more than 120 days after submission.
- ☒ C) District and Juvenile judges only - I have held no more than three cases per calendar year under advisement more than two months after submission.
- ☐ D) District and Juvenile judges only - I have held no cases under advisement more than 180 days after submission.
- ☒ E) I am in compliance with the Code of Judicial Conduct.

IF APPLICABLE, please explain why you DID NOT check any of the JUDICIAL PERFORMANCE EVALUATION boxes above. Please include the standard letter(s).

This issue was previously addressed with JPEC by a letter to Jennifer Yim from Neira Siaperas. Here are the contents of the letter explaining the situation.

Dear Dr. Yim:

The purpose of this letter is to provide additional information regarding the declaration by Judge Renee Jimenez that she has failed to comply with Rule 3-101(3)(C)(ii) of the Utah Code of Judicial Administration. A letter on behalf of the Judicial Council and an explanation of the circumstances were previously submitted to you on September 28, 2021.

The previously submitted letter indicated that Judge Jimenez had an "extraordinary" caseload at the time in 2017 when she held one case under advisement for longer than 180 days. In 2017, a typical judicial caseload in the Third District Juvenile Court included one to two Termination of Parental Rights (TPR) cases a month per judge. Some TPR cases may only take a few hours of judicial time while other TPR cases are significantly more complex with multi-day termination trials and contested testimonies. In 2017, these complex cases occurred approximately four times per judge per year in the Third District Juvenile Court. In another urban judicial district, the average was 1.78 multi-day complex trials per judge per year during the years 2016-2018.

TPR cases are, by their very nature, demanding and time consuming. Contested TPR cases are exceptionally fact specific and require a great deal of deliberation and consideration which increases significantly on more complex contested TPR cases. Each contested TPR case requires 30-60 hours of judicial time while more complex contested cases may take 60-100+ hours of judicial time per case to prepare an order.

During the six month period in 2017 that the case in question was under advisement, Judge Jimenez disclosed a total of eleven scheduled TPR trials with several of them being complex or significantly complex. Calculating at the lower end of the time demands and presuming that only three of the eleven cases were complex to significantly complex, that is approximately an additional 200 hundred hours (five full work weeks) devoted to deliberating and writing decisions. This time estimate only includes complex to significantly complex cases. Judge Jimenez additionally had workload requirements of considering or writing decisions on eight presumably less complex TPR cases; the time spent in court for multiple days of pre-trial and trial hearings; preparing for court; and attending to her regular delinquency and child welfare caseloads.

Judge Jimenez's workload during this time period in 2017 was indeed "extraordinary" when compared with the averages of TPR cases handled by judges in the two urban districts during the same time period. The lower end estimates of the time required for Judge Jimenez's cases during the applicable time in 2017 would certainly require significant time spent after normal work hours and on weekends to prepare the opinions and orders. The ten TPR cases (in addition to the case held under advisement) involved 22 children whose permanency was at issue. A judicial officer from the Third District Juvenile Court indicated that the caseload of eleven termination trials and the related child permanency hearings during the time period in question is something the judge "has not had, nor heard of."

A quote from the judges who provided information used in this letter appropriately illustrates the circumstances: "This was a situation where, through a perfect storm, a very hard working judge became overwhelmed. These cases are emotionally demanding, and judges feel, as they should, a heavy responsibility regarding the welfare of the children and families on their caseloads."

Thank you for considering this supplemental information and please let me know whether any additional information would be helpful.

Thank you,

Neira Siaperas
Juvenile Court Administrator

IF APPLYING FOR REAPPOINTMENT, please list the approximate dates that you served on the bench.

June 2013 - December 2022

YEAR 1: My education hours for the current fiscal year (July 1-June 30) are: *

30 or more ▼

YEAR 2: My education hours for the last fiscal year (July 1-June 30) were: *

30 or more ▼

YEAR 3: My education hours 2 years ago (fiscal year July 1-June 30) were: *

30 or more ▼

IF APPLICABLE, please explain why you HAVE NOT completed 30 EDUCATION HOURS during any of the 3 fiscal years listed above. Please include any planned courses for the current year.

.....

PLANNED LEAVES OF ABSENCE: Please check the box to indicate acknowledgement. *



I understand that I must request a transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education or minimum senior judge service work requirements.

ELECTRONIC SIGNATURE: Please sign below in the following format: /s/ NAME

Renee Jimenez

.....

This form was created inside of Utah State Courts.

Google Forms

3rd Judicial District Juvenile Court

Visit JUDGES.UTAH.GOV for more information about this judge

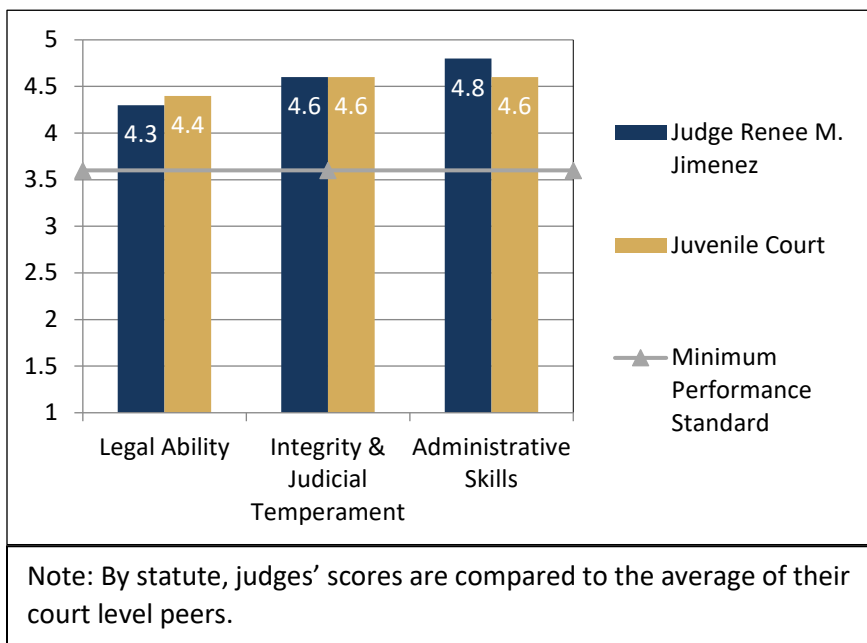


Honorable Renee M. Jimenez

- Serving Salt Lake, Summit & Tooele counties
- Commission Determination: **Meets or Exceeds Performance Standards**
- Commission Vote Count: 11 - 0
- Performance Standards: Passed 7 of 8

Appointed in 2013, Judge Renee M. Jimenez's scores are statistically consistent with her juvenile court peers on legal ability, integrity and judicial temperament, administrative skills, and procedural fairness. Ninety percent of survey respondents recommend that Judge Jimenez be retained. Respondents and courtroom observers commend the judge's fairness, professionalism, and understanding of the law. Both groups appreciate her detailed, careful approach and that she "took pains to ensure that she heard from everyone." All observers report confidence that they would be treated fairly if they were to appear in Judge Jimenez's court. Judge Jimenez did not meet the judiciary's minimum performance standard governing timeliness of opinions with regard to one case. After a review of additional documentation provided by the judge, the commission is satisfied that the problematic case was limited to a single instance during a time of unprecedented caseloads. Further, survey respondents who appear regularly before Judge Jimenez rate her performance as a 4.7 out of 5 for ruling "in a timely fashion." This judge meets discipline standards set by statute and has been certified by the Judicial Council as meeting education requirements and mental and physical competence standards.

Judge Renee Jimenez was appointed to the Third District Juvenile Court in May 2013 by Gov. Gary Herbert. Judge Jimenez received an undergraduate degree from the University of Utah in 1988 and a law degree from the University of Utah College of Law in 1991. From 1991 until her appointment to the bench, Judge Jimenez worked for the Utah Attorney General's Office in the Division of Child and Family Support and in the Child Protection Division. She has served on the Utah Supreme Court's Ethics and Discipline Diversion Committee, the Judicial Ethics Advisory Committee, the advisory committee on Disproportionate Minority Contact and the Juvenile Court eFiling Steering Committee. Judge Jimenez also presides over a Family Dependency Drug Court.





Retention Evaluation Report 2022



The Honorable Renee M. Jimenez

About the Report

In making its determination about whether a judge meets or exceeds performance standards or does not meet them, JPEC considers the judge's legal ability, integrity and judicial temperament, administrative skills, procedural fairness, public comment, and judicial discipline records as well as compliance with judicial education, fitness for office, and case-under-advisement time standards. If a judge meets statutorily required scores, there is a legal presumption that commissioners will vote that the judge meets or exceeds performance standards. If a judge fails to meet statutorily required thresholds, there is a legal presumption that commissioners will vote that the judge does not meet performance standards. Included below are the Survey and Courtroom Observation Reports. The Survey Report summarizes information collected from attorneys, court employees, jurors (district and some justice court judges only) and juvenile court professionals (juvenile court judges only). Surveys are anonymous and inclusion in the survey is based on court-appearance records. The Courtroom Observation Report summarizes information reported by at least four trained, volunteer court observers per judge. *

*The Covid-19 pandemic affected JPEC's ability to collect evaluation data for some judges. Unless it indicates otherwise in the text of the judge's narrative, the Commission finds the data collected sufficient for the determinations made.

Content Links

- Notes to the Judge
- Survey Report
 - Survey Results
 - Survey Information
- Report of Courtroom Observation
 - Explanation of Courtroom Observations
 - Evaluative Criteria
 - Content Analysis
 - Individual Courtroom Observation
- Public Comments
- How to Read the Results

Notes to the Judge

- Survey comments are provided verbatim, except they may be redacted in two ways: 1) information that may identify a respondent has been redacted and replaced by [xxxRedactionxxx] and 2) information that JPEC's executive director deemed to be in violation of Utah State Code §78A-12-204(9)(b)(ii) has been redacted from the commission's view but presented to you in brackets with an asterisk to flag the employment law redaction.
- Survey comments will not be included in the published retention reports.
- Public comments will not be included in the published retention reports.
- During a portion of deliberations, JPEC reviewed judge reports without knowing the name, gender or court location of the judge. As required by statute and rule, commissioners first viewed a list of evaluated judges in order to declare any disclosures, recusals, and disqualifications. Commissioners then reviewed judge reports without the above identifying information. Final deliberations and voting occurred with identifying information in order to abide by the recusals and disqualifications.

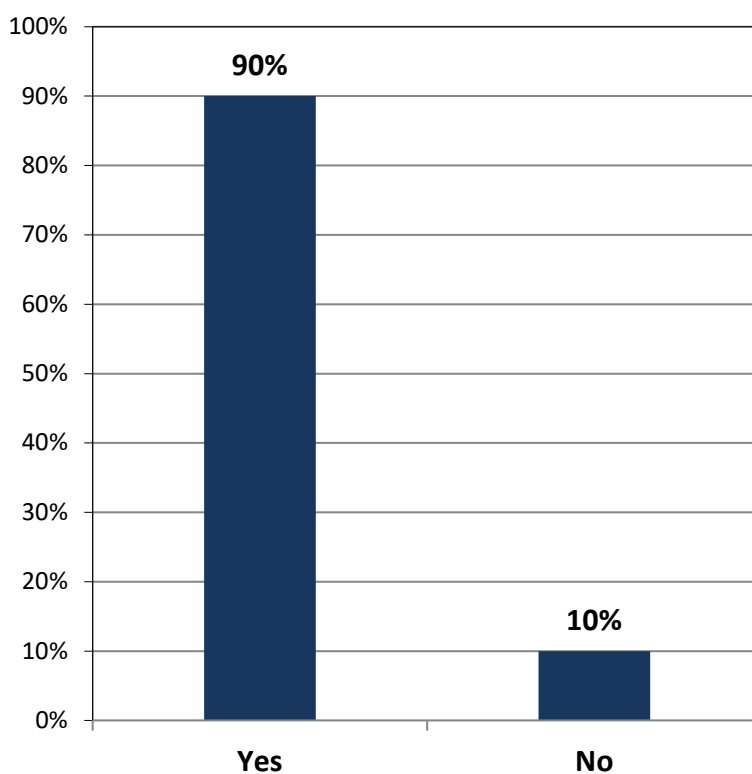


Survey Report

Survey Results

For Judge Renee M. Jimenez, the commission contacted 196 individuals about their experience with the judge. Of the 98 (50%) who responded, 42 (21%) agreed they had worked with Judge Jimenez enough to evaluate the judge's performance. This report reflects these 42 responses. For more information on the survey, please see Survey Information. For more information about the evaluation process, please see How to Read the Results.

Retention Question



Survey Report

Retention Question Comments

Comment ID	Respondent ID	Comment
S20215744	S20212154	As I have said before that she is knowledgeable, fair and appropriate. I see no reason for her not to be retained.
S20215162	S20212175	By far the best judge I've had the opportunity to work with
S20215481	S20212189	Judge Jimenez is great to work with and is very respectful.
S20215352	S20212208	She is amazing at what she does on the bench and in the workplace. She is patient, understanding, approachable, encouraging, and a leader. She makes probation officers new and old feel as if they are trusted and their voices are heard in very hearing. This goes a long way each day with those tha come in contact with her courtroom.
S20215002	S20212215	Judge Jimenez has a great connection with the youth and the family's. Judge is fair in her decisions and does not second guess our agency decisions. The Judge is open minded, and fair.
S20215960	S20212311	Judge Jimenez is fair, she is kind and thoughtful of everyone participating in her court
S20215912	S20212384	Great with clients, and all other professional and legal team members.
S20215107	S20213016	I have had the opportunity to sat in her court sessions in numerous occasion. She is very knowledgeable with all of her case, she is very polite but firm and takes control of her courtroom when things gets out of control. She is very respectful to those attending, whether your the accuser's, witnesses, defendant's, or even observer's. She makes everyone in her courtroom feel welcome. She knows her limits as a Judge. She is very impartial with her decision



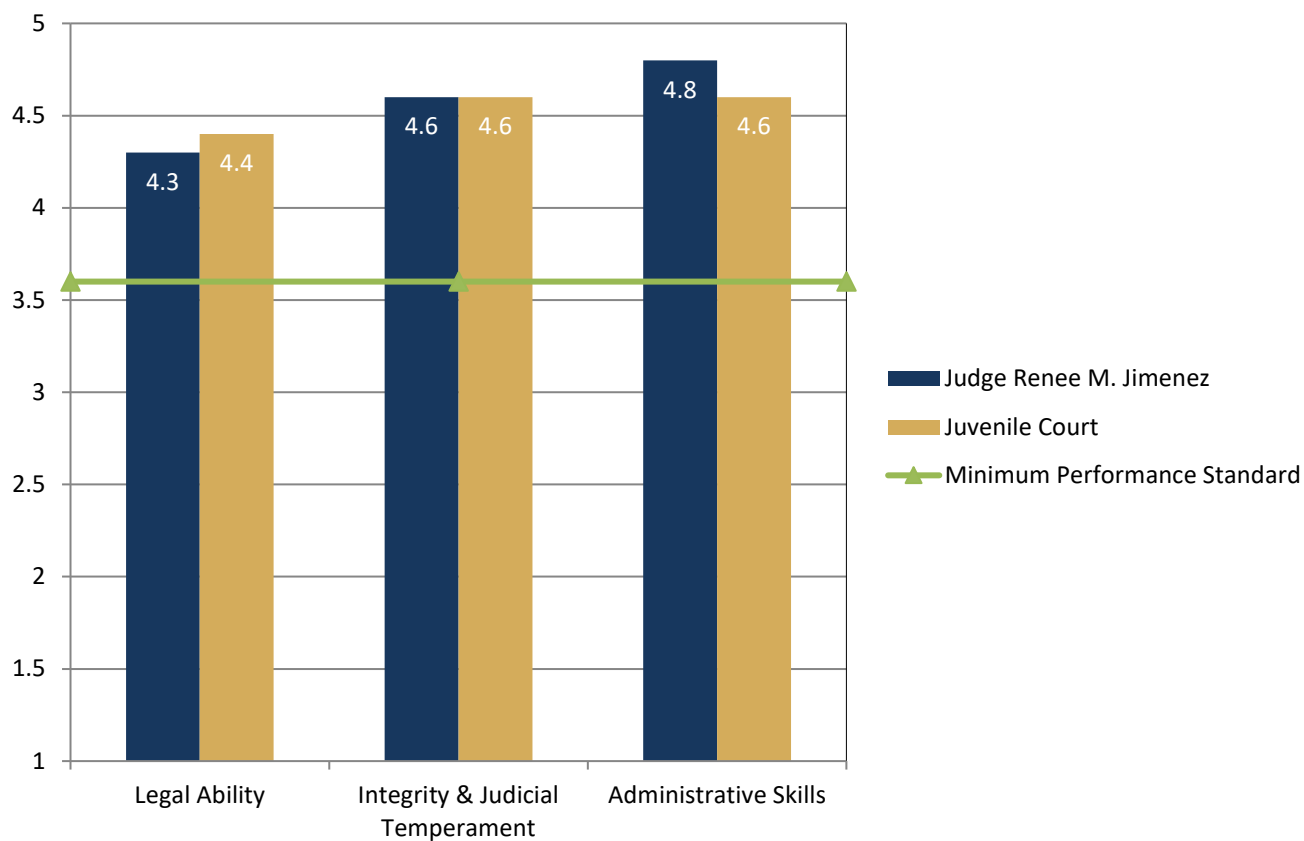
Survey Report

		making, very unbiased, but most importantly, she respects the law.
S4800539	S180846	Excellent temperament, open-minded, well-suited for juvenile court
S4801352	S180437	Exceptional.
S4801673	S182320	Judge Jimenez does a great job. Makes good, articulate, legally sound rulings.
S4801038	S180317	Judge Jimenez shames the juveniles in her courtroom. She wants them to explain in graphic detail what crime they committed without realizing the minor is probably taking a plea because of threats from the prosecution. Needs more training and needs to stop shaming the minors.



Survey Report

Statutory Category Scores



Survey Report

Procedural Fairness Results

The judge must demonstrate by the totality of the circumstances that the judge's conduct in court promotes procedural fairness for court participants at a level commensurate with the other scored standards.

Table A. Overall Procedural Fairness Determination

Category	Judge Jimenez
Procedural Fairness	Pass

To determine whether the judge passes the procedural fairness standard, the Commission considers only data collected as part of the performance evaluation, which includes:

- Courtroom Observation results
- The judge's disciplinary record
- Public Comments
- Information from the judge's most recent midterm evaluation
- Survey Results (below) and survey comments:

Category	Judge Jimenez	Juvenile Court
Procedural Fairness	4.7	4.5



Survey Report

Responses to Survey Questions

Category	Question	Judge Jimenez	Juvenile Court
Legal Ability	The judge follows the legal rules (e.g. civil procedure, criminal procedure, evidence, juvenile, appellate) that apply to the case at issue.	4.2	4.4
Legal Ability	The judge made adequate findings of fact and applied the law to those facts.	4.4	4.4
Legal Ability	The judge followed legal precedent or explained departures from precedent.	4.3	4.4
Legal Ability	The judge only considered evidence in the record.	4.3	4.4
Legal Ability	The judge based opinions/decisions on applicable legal principles and controlling law.	4.1	4.4
Legal Ability	The judge's opinions contained a readily understandable ruling.	4.4	4.5

Rated on a scale from 1 (low) to 5 (high)



Survey Report

Responses to Survey Questions (continued)

Category	Question	Judge Jimenez	Juvenile Court
Integrity & Judicial Temperament	The judge paid attention to what went on in court.	4.7	4.7
Integrity & Judicial Temperament	The judge's personal life or beliefs did not impair his or her judicial performance.	4.5	4.4
Integrity & Judicial Temperament	The judge conducted proceedings without favoritism.	4.1	4.4
Integrity & Judicial Temperament	The judge considered arguments from all sides before ruling.	4.7	4.5
Integrity & Judicial Temperament	The judge demonstrated diligent work habits.	4.7	4.7
Integrity & Judicial Temperament	The judge maintained a professional demeanor in the courtroom.	4.7	4.6
Integrity & Judicial Temperament	The judge worked to ensure that the participants understood the court proceedings.	4.7	4.6
Integrity & Judicial Temperament	The judge demonstrated respect for the time and expense of those attending court.	4.5	4.6
Integrity & Judicial Temperament	The judge made sure that everyone's behavior in the courtroom was proper.	4.5	4.6

Rated on a scale from 1 (low) to 5 (high)



Survey Report

Responses to Survey Questions (continued)

Category	Question	Judge Jimenez	Juvenile Court
Administrative Skills	The judge was prepared for court proceedings.	4.8	4.7
Administrative Skills	The judge's interactions with courtroom participants and staff were professional and constructive.	4.8	4.6
Administrative Skills	The judge ruled in a timely fashion.	4.7	4.7
Administrative Skills	The judge communicated clearly.	4.8	4.6
Administrative Skills	The judge managed the court calendar effectively.	4.7	4.6
Administrative Skills	The judge convened court without undue delay.	4.8	4.7
Category	Question	Judge Jimenez	Juvenile Court
Procedural Fairness	The judge treated all courtroom participants with equal respect.	4.6	4.5
Procedural Fairness	The judge performed his or her duties fairly and impartially.	4.6	4.5
Procedural Fairness	The judge promoted public trust and confidence in the courts through his or her conduct.	4.7	4.5
Procedural Fairness	The judge provided the court participants with a meaningful opportunity to be heard.	4.8	4.6

Rated on a scale from 1 (low) to 5 (high)



Survey Report

Statutory Category Comments

Comment ID	Respondent ID	Comment
S20215754	S20212035	Judge Jimenez is a fair judge. I feel she takes the time to understand a case prior to making decisions/
S20215035	S20212154	I feel like Judge Jimenez's legal does a really good job. I have felt heard, she has listened to parents, foster parents if they have things they feel they need said. I feel she knowledgeable about the laws, has good integrity. I feel her temperament administrative skill and procedural fairness. [xxTime periodxx] the WebEX hearing but they have all gone well and I feel she is fair with all parties.
S20215892	S20212175	Judge Jimenez is the textbook definition of professionalism and an impeccable example of what it means to be a Judge.
S20215205	S20212189	Judge Jimenez has always seemed to be very respectful and knowledgeable of all the cases that are seen before her in court. Judge Jimenez is a great example of being a judge.
S20215610	S20212215	During the evaluation period and over the last X years working with Judge Jimenez has been amazing to work with. Judge Jimenez allows JJS to make recommendations, with her trust and support.
S20215515	S20212247	Judge Jimenez is always prepared for hearings, knows the law, and applies it fairly and appropriately.
S20215044	S20212311	Judge Jimenez does a well job
S20215520	S20212384	She is great to work with.
S20215071	S20212749	Judge Jimenez is a fair and does a great job in Court.
S20215681	S20212872	Judge Jimenez is a fair Judge always looking for the child's best interest.



Survey Report

S20215568	S20213016	Judge Jimenez treat all of cases with respect, not only she respects all parties involved but she listen and hears what the alleged accusers have to say. Her decision making is not based on personal opinion but factual basis.
S4801952	S180954	Does not hold certain parties accountable for delay, enables them to avoid time limitations and deadlines, and even rewards disingenuous tactics on one side of the courtroom. Turns a blind eye to sloth and bad faith positions taken by that counsel.
S4801705	S180846	Excellent temperament for juvenile court. Fair and respectful to all parties.
S4801899	S180437	I tried a serious case in front of Judge Jimenez I was impressed by her demeanor; knowledge; and patience. She is exceptional.
S4801220	S180751	Judge Jimenez has a very polite pleasant demeanor in court. She is very patient. Occasionally shaky on the rules and rules of evidence. Ruled that State must produce a copy of child pornography to the defense attorney which is not the appropriate way to handle this kind of sensitive material. Defense attorneys are never offered a copy in discovery but instead are permitted to review/inspect in the presence of law enforcement as per best practices for handling this type of sensitive material. Too permissive of bad behavior from counsel. Allowed attorneys to make nasty personal attacks and attribute bad faith motives to opposing counsel without any support for the allegations. She would just turn a blind eye instead of speaking up and making it clear such behavior is not acceptable.
S4801493	S182320	Judge Jimenez has a pleasant demeanor. She does a nice job.
S4801810	S181667	Judge Jimenez is a brilliant and hard-working judge. Her biggest strength is her legal ability. Her command of juvenile law is highly praised in the Utah legal community. Early in my practice, when I told a colleague that I was appearing in front of Judge Jimenez that day, he said, "You can always count on Judge Jimenez to know and follow the law." In all my dealings with Judge Jimenez since then, I have found this assessment to be accurate. Judge Jimenez writes detailed legal opinions with extensive findings and citations to statutes/caselaw that clearly show how she reaches her conclusions. Occasionally, she takes a long time to issue her



Survey Report

		decisions but this also shows the time and thought she puts into every case. I recommend that Judge Jimenez be retained.
S4801121	S180886	Judge Jimenez is a good judge. She follows the letter of the law, but at times tends to be a bit harsh in her demeanor. She is a strict judge that is generally quite impartial, but at times can have her decisions made before hearing full argument.
S4800707	S180317	Judge Jimenez shames the juveniles in her courtroom. She wants them to explain in graphic detail what crime they committed without realizing the minor is probably taking a plea because of threats from the prosecution. Needs more training and needs to stop shaming the minors.
S4801892	S181158	Overall Judge Jimenez is a fine judge and gives due consideration to those in her courtroom. I find her respectful to all involved, generally. However, on occasion, I've found her rulings to be at odds with standing law or rule, or interpreted law in a way that strays from the norm. In particular, Judge Jimenez sometimes appears reluctant to rule against state actors when there are questions of law or fact. This is not always the case, however, it appears to be an ongoing trend.
S4801831	S180006	She may be Utah's finest juvenile court judge. She is knowledgeable, fair, clear in her rulings, treats everyone with kindness and respect. We are fortunate to have her on the bench.



Survey Report

Attribute Question Summary

Survey respondents rated how well a list of attributes describes the judge. A rating of 1 indicates the descriptor *does not describe the judge at all*, and a rating of 5 indicates the descriptor *describes the judge very well*. For the positive descriptors, a higher average score is better. For the negative descriptors, a lower average score is better.

Descriptor	Judge Jimenez	Juvenile Court	
Attentive	4.6	4.6	Positive Attributes HIGHER average score is better
Capable	4.6	4.5	
Ethical	4.7	4.7	
Knowledgeable	4.7	4.6	
Impartial	4.3	4.2	
Open-minded	4.4	4.3	
Disrespectful	1.4	1.6	Negative Attributes LOWER average score is better
Impatient	1.6	1.8	
Indecisive	1.5	1.8	
Unprepared	1.3	1.5	



Survey Report

Additional Survey Comments

Comment ID	Respondent ID	Comment
S20215192	S20212749	No concerns, maintains professionalism and is a fair Judge.
S4800332	S180317	Judge Jimenez shames the juveniles in her courtroom. She wants them to explain in graphic detail what crime they committed without realizing the minor is probably taking a plea because of threats from the prosecution. Needs more training and needs to stop shaming the minors. She does not understand the Juvenile justice system.
S4800885	S180437	She is well versed in the law and fair.



Survey Information

This report presents the results from the 2021 survey process, conducted by Market Decisions, LLC. A detailed description of the survey methodology is available separately on the [Utah Judicial Performance Evaluation website](#).

Description of Sample

The following groups are invited to participate in the survey process:

- Attorneys with appearances before the judge,
- Court staff who work with the judge,
- Juvenile court professionals who work in the judge's courtroom on a regular and continuing basis to provide substantive input to the judge (juvenile court judges only), and
- Jurors who participate in jury deliberation (district and justice court judges only).

With the exception of the attorney survey, the survey contractor attempts to survey all court staff and juvenile court professionals who work with the judge and all jurors who reach the point of jury deliberation. The lists of court staff and juvenile court professionals are provided by the courts and by the Division of Child and Family Services and Juvenile Justice Services. A list of jurors is created after each trial. All lists are forwarded to the surveyor, Market Decisions, LLC.

For the attorney survey, a representative sample of attorneys is drawn to evaluate each judge based on appearances over a designated time period. The sample is weighted to select those with the greatest experience before the judge, assuming that these people will have a better knowledge base about the judge than those with less experience. Attorneys are first stratified into three groups: those with one or more trial appearances, those with five or more non-trial appearances, and those with fewer than five non-trial appearances. Attorneys within each sample are then randomized prior to selection. Selection begins with attorneys who have trial experience, then those with a greater number of non-trial appearances (if needed), and finally those with fewer non-trial appearances (if needed).

Summary of Survey Methods

Surveys are conducted online, using web-based survey software. Each qualified respondent receives an initial email notification signed by the Chief Justice, the Governor, and JPEC Chairperson. Next, an email invitation, signed by JPEC's Executive Director and the Utah State Bar President contains a link to access all the individual surveys each respondent is invited to complete. A reminder email is sent one week later to those who did not respond by completing and submitting a survey. This is followed by at least two additional reminder emails sent to respondents over the next three weeks. If a respondent completes only part of the survey, they are able to finish the survey at a later time.

The number of questions included in the survey varies, ranging from 9 (jurors) to 35 (attorneys with an appearance before an appellate court judge). Each question is evaluated on a sliding scale ranging from 1 (low) to 5 (high).



Survey Information

Responses to individual questions are used to calculate averaged scores in three statutory categories: Legal Ability, Integrity & Judicial Temperament, and Administrative Skills. Judges also receive an average score in Procedural Fairness.

Evaluation Period

The retention evaluation period for judges standing for election in 2022 began on October 1, 2019 and ended on September 30, 2021.



Report of Courtroom Observations

Explanation of Courtroom Observation Summary

SECTION	DESCRIPTION
Overall assessment	<p>The first statement in this section is an overall summary of the entire set of observer comments.</p> <p>The second statement indicates the number of observers indicating that they would feel comfortable appearing before the judge.</p>
Widely agreed-upon themes	<p>Behaviors reported by all (or almost all) observers and thus well established. Deficits mentioned here were also widely reported and therefore merit attention.</p> <p>The subsequent statements are not intended to be a complete summary of the observers' comments, but rather highlight the most frequently noted and forcefully expressed themes, presented in the way that the observers expressed them, with the goal of evoking an overall sense of the entire set of observer comments.</p>
Minority Observations	<p>Behaviors noted by two (or possibly three) observers that would be worth building on (if desirable) or otherwise thinking about avoiding.</p> <p>Not every behavior reported by a minority of observers is summarized here, only those that reflect a notable or somewhat discrepant perspective that was not widely agreed upon.</p>
Anomalous comments	<p>Comments of one (or in rare cases two) observers that reflect a markedly different or decidedly contradictory perspective from all other observers. They are intended to stimulate reflection, such as: why were these observers affected by this behavior, or does this particular situation tend to lead to this uncharacteristic behavior?</p> <p>Not every anomalous comment in the observers' comments are included in this section, typically if they are too minor, or appear to reflect something about the observer rather than the judge.</p>

Paragraphs are introduced with the following terminology.

If the number of observers is specified, e.g. "All observers reported..." or "Three observers reported...", then every statement in the paragraph was mentioned or implied or alluded to by that number of observers.

If the word "variously" is added, e.g. "All observers variously reported..." or "Three observers variously reported...", then not every statement in the paragraph was directly mentioned or implied or alluded to by every one of those observers, but rather the sense of all the statements in the paragraph taken together was.



Report of Courtroom Observations

Evaluative Criteria for Courtroom Observation

CRITERIA	DESCRIPTION
RESPECT	
Listening & Focus	Listening refers to all indications of attention and engagement through active listening.
Well-prepared & efficient	Efficiency refers to the judge's behaviors. The court's efficiency appears below under "Courtroom tone & atmosphere".
Respect for other's time	This includes the starting time of sessions as well as all interactions with those in court that take into consideration the value of their time.
Courtesy, politeness, and general demeanor	This refers to respectful behaviors generally, as well as behaviors directed at specific individuals that indicate respect for a person's value or status.
Body language	This refers to eye contact and facial expressions, general body language, and engaged behavior.
Voice quality	This refers to both mechanical qualities such as pitch and volume, and emotional qualities such as inexpressive, sarcastic or exasperated tone.
Courtroom tone & atmosphere	This refers more generally to the tone and atmosphere of the courtroom.
NEUTRALITY	
Consistent and equal treatment	This refers to listening to all sides, and treating individuals in similar situations similarly.
Demonstrates concern for individual needs	This refers to concern for individual differences and giving due regard to the individual's specific situation.
Unhurried and careful	This refers to allowing sufficient time for the judge and those in court to conduct themselves in a thorough manner.
VOICE	
Considered voice	This refers both to allowing those in court to express themselves and to the judge's consideration of what was expressed in his/her statements or decision.
Formal voice	This refers to giving voice to participants based only on required procedure without apparent consideration by the judge of what was expressed.



Report of Courtroom Observations

COMMUNICATION

Communicates clearly	This refers both to clarity of speech and to the use of language appropriate to the listener.
Ensures information understood	This refers to active attention by the judge in ensuring those in court understand all information relevant to them, and includes translation and comprehension for non-native English speakers.
Provides adequate explanations	This refers to providing sufficient explanation of the basis of decisions and of legal procedure and terminology to ensure that those in court understand proceedings relevant to them.



Report of Courtroom Observations

Content Analysis

Overall Assessment

- Together, the four observers were strongly positive about Judge Renee M. Jimenez. Two observers had some additional comments (See “Anomalous Comments”).
- All observers reported confidence that if appearing before Judge Jimenez they would be treated fairly.

Widely Agreed-Upon Themes

- Observers variously reported that Judge Jimenez exhibited a “professional demeanor,” was “formal but approachable,” “very patient and accommodating,” and “thanked people for their input” by saying, “I appreciate all your information.” She demonstrated respect by “[including] everyone in the proceedings when future court dates were being discussed” and ensured that “dates were compatible with the defendant and parent's schedules.” Her voice was “carefully projected,” having a “constant tone and volume, unless emphasis was necessary.” She was “neutral but open,” “equally helped stakeholders,” and was “transparent about how the rules of law were applied and how decisions were being made.” She was “detailed,” “careful,” and gave “plenty of time for presentations” and “would often repeat what she had heard to verify and validate the accuracy of the intended message.” She “took pains to assure that she heard from everyone and that everyone had the opportunity to participate,” and she took “suggestions [into] consideration.” In one matter, she became “animated and interested in a very positive manner to what was being expressed and stated, ‘Continue to talk to..... so your voice is heard.’” She was “clear,” “went over the expectations,” and articulated “in simple English the options available under the law,” in one case, “[clarifying] with the mom that she still has parental rights, but reunification was terminated.”

Minority Observations

- Two observers admired the judge’s listening skills. One noted that she “listened” and the other that she “paid attention when people spoke.”

Anomalous Comments

- Two observers expressed contrasting views regarding the judge’s facial expressions.
 - The first observed that her “facial expressions added gravitas to the courtroom proceedings” and were “helpful both from a professional and a human relations point of view.”
 - In contrast, the second observed, “There are times when she is giving praise to the parents and child, or showing empathy, and her facial expressions don’t match her actions,” noting that, in one matter, “Judge Jimenez tried to show empathy and help the mom to understand, but her facial expressions didn’t reflect such efforts.”



Report of Courtroom Observations

Report 1

Date: 03/10/2021

Location: Salt Lake County -
West Jordan Juvenile Court

Proceeding:

Neutrality

How would you describe this judge's ability to be neutral, principled, and consistent?

Judge Jimenez conducted fast paced hearings on both days; 6 cases were processed, and she equally helped stake holders by clarifying and stating in simple English the options available under the law and also the impact of choosing one or the other option chosen by the stake holder. She listened carefully, was unhurried, and maintained neutrality throughout.

Respect

How would you describe this judge's respect for people and their rights?

I noticed that the judge was very respectful to stake holders by giving them equal opportunity to present their narrative, and version of events. She allowed them plenty of time for presentations; she assisted them in articulating and clarifying their positions. She facilitated whole hearted good conversations and discussions focused toward finding positive solutions. She ensured that no time was being wasted and her interventions were timely and appropriate to keep things moving. She knew details of each and every case, i.e. was prepared for the proceedings. Her voice quality----pitch, volume, tone, modulations were deliberate, i.e. carefully projected.

Voice

How would you describe this judge's skill at providing the participants a voice in the proceedings?

Judge Jimenez provided voice to participants by seeking their inputs, and, after reflection and careful consideration, by including those in her orders, stipulations and recommendations. She would often repeat what she had heard to verify and validate the accuracy of the intended message. This ensured clear comprehension and communication.

Additional Questions

Understanding that the Judicial Performance Evaluation Commission will ultimately recommend that the voters retain a judge or not, is there anything else you would like the commission to know about your experience observing this judge?

Judge showed that not only she had excellent knowledge of details of cases being processed but she had the ability to simply present law issues in a easy to understand language.

Apart from your specific observations about the judge, did you observe anything else that might help to improve the experience of court users?

Observations were made on March 8th and 10th, 80 minutes +60 minutes, respectively. Judge Jimenez had problems with her camera both days, so body language, eye contact etc. could not be observed.



Report of Courtroom Observations

Cases related to: Guardianship, Family plan, Temporary v/s permanent placement , Independent living skills, Virtual v/s in person visits,

If you were to appear before this judge, would you have confidence that this judge would treat you fairly? Why or why not?

Based on court room observation and observations presented in the above sections, I can say with confidence that if I have to appear before Judge Jimenez I will be accorded respectful consideration under the confines of the law. My input will be sought and plugged in to the decision and outcome.



Report of Courtroom Observations

Report 2

Date: 10/30/2020

Location: Salt Lake County -
West Jordan Juvenile Court

Proceeding: Pretrial, General Review,
Permancy, Disposition

Neutrality

How would you describe this judge's ability to be neutral, principled, and consistent?

Judge Jimenez's voice was always consistent. It had constant tone and volume, unless emphasis was necessary. She had a neutral but open demeanor. The Judge displayed a welcoming manner to those speaking and actively listened.

In one disposition hearing Judge Jimenez did an amazing demonstration of neutrality, after letting everyone have input, even trying to illicit more so all were completely heard, before she spoke and ruled. After giving everyone that final opportunity, the Judge went through a detailed history of events, risk factors, drug use, staying with the wrong peer group, jumping between homes, other concerns, and mainly not following through with the many opportunities offered to help break the cycle(s). She made it clear the individual had been unwilling and unresponsive to the help offered. The Judge then proceeded to explain what would happen and when. The juvenile would be put into State custody and there would be a 24 hour window until they were picked up, and if they chose to "run," they would be placed in detention. The Judge finished with letting the individual know the Court would have a review hearing in 60 days and on a regular basis.

Respect

How would you describe this judge's respect for people and their rights?

Judge Jimenez would make sure (or have a discussion about) who should be involved with a proceeding and make an effort to connect to them all if they weren't on Webex. In one instance all that was listed on Webex was Caller #4 and she asked "is that? and "who do you have with you?" In another case where it was audio only Judge Jimenez said "..... how are you? Sorry I can't see your face today."

Judge Jimenez maintained good eye contact and paid attention as people spoke. She showed patience as people spoke or gathered their thoughts. The Judge thanked people for their input or said, "I appreciate all your information."

The Judge would call people by name and ask, "Is there anything you would like to say?"

When a plan or consensus on how to move forward was reached, she would make a comment like, "I appreciate your efforts working out a plan," or "Thank you for your thorough report and recommendations."

In one instance, where the individual was about to turn 21, the Judge commented, "I am so proud of you," "You are a delightful young lady," and "It sounds like you have some big things coming up."

Judge Jimenez went on with her team to make sure the individual would receive after care and not fall through the cracks. Acknowledging the current Covid situation and restrictions, she hoped that in the future the individual would stop by and see her.



Report of Courtroom Observations

Voice

How would you describe this judge's skill at providing the participants a voice in the proceedings?

Judge Jimenez is an excellent listener. Her responses and questions show she listened to what was said and the manner/tone by which it was expressed. The Judge appeared to address the underlying feeling as well as the words. She would acknowledge feelings with a smile and even laughed when it was appropriate.

In one proceeding, you could see her become animated and interested in a very positive manner to what was being expressed and stated, "Continue to talk to so your voice is heard" and "I like that too."

When there was an issue with Webex sound/muting she asked, "Can you hear me" or "Can you hear me now?" and "Let me know by giving a thumbs up." Along with this, she would instruct people "to mute your microphone if not speaking" to address any feedback problems. In one case, where an individual wasn't essential but should be involved the Judge said, "We are still waiting for one other person so we will just hang on for one moment" so they could be heard.

Additional Questions

Understanding that the Judicial Performance Evaluation Commission will ultimately recommend that the voters retain a judge or not, is there anything else you would like the commission to know about your experience observing this judge?

The Judge appeared to have a good working relationship with all participants. They all interacted well towards the best outcome as a "team". Judge Jimenez was good in not rushing proceedings so everyone had time to be heard/have input.

Apart from your specific observations about the judge, did you observe anything else that might help to improve the experience of court users?

Raising the camera so it is more straight on to Judge Jimenez instead of an upward angle would help. Bringing the camera slightly closer so the Judge was the main image would also be nice. In a couple of instances, there was very uneven lighting (coming from the right side), so the right side of the Judge's face was lit up and the left side was dark/totally in shadow. In my opinion, this is not a good look for a Judge.

If you were to appear before this judge, would you have confidence that this judge would treat you fairly? Why or why not?

I would have complete confidence if I or any of my children/grandchildren were to appear before Judge Jimenez, that we would be listened to, treated fairly, and have a well thought out outcome that would be clearly reasoned and explained.



Report of Courtroom Observations

Report 3

Date: 08/06/2020

Location: Salt Lake County -
West Jordan Juvenile Court

Proceeding: Pretrial, Review, and
Permanency

Neutrality

How would you describe this judge's ability to be neutral, principled, and consistent?

Judge Jimenez's ability to be neutral, principled and consistent, was shown by being open, clear, and transparent about how the rules of law were applied and how decisions were being made. This was showed in a few cases. One case in particular, the mom started to cry because she thought she lost her kids. The Judge clarified with the mom that she still has parental rights, but reunification was terminated. The judge went over the expectations and what the final decision was. Every participant was treated equal and Judge Jimenez was unhurried, patient and careful. Since Covid-19, court has been using WebEx, and with that there was a lot of feedback since people didn't turn off their microphone when not talking. The Judge was patient every time there was feedback. The Judge had to ask several times for someone to turn off their microphone. Judge would also apologize several times for the feedback that was happening. In another case, Judge Jimenez gave some time for the child's attorney to get contact information from the kid, since the attorney had a hard time keeping in contact with the child, due to him not have a working phone.

Respect

How would you describe this judge's respect for people and their rights?

Judge Jimenez showed respect for the people and their rights, by respecting their time, trying to do the right thing for everyone involved, and helping interested parties to understand decisions and what they must do. In one case, court was supposed to start at 2pm, but there were people that were still being waited on. After a few mins of waiting, the Judge apologized for the wait and explained they were still waiting for someone. In each case, the judge would open up each case by asking the probation officer, attorney general, attorney, and parents about updates and what their suggestions were. The judge would take these suggestions in consideration before she made a decision.

Voice

How would you describe this judge's skill at providing the participants a voice in the proceedings?

Judge Jimenez gave participants of the court an opportunity to voice their opinions and demonstrated that their stories had been heard. In several cases, the Judge allowed the parents to express their concerns and feelings. In a permanency case, a father, who joined in by phone, asked the judge if he could say something and if his kids would have access to the recordings. The judge allowed the father say what he needed to say without interrupting. The father started to cry and was very emotional. After the father was done, he hung up. The judge was respectful the whole time the father was talking.



Report of Courtroom Observations

Additional Questions

Understanding that the Judicial Performance Evaluation Commission will ultimately recommend that the voters retain a judge or not, is there anything else you would like the commission to know about your experience observing this judge?

Judge Jimenez treats people of the court with respect and fairness. However, there are times when she is giving praise to the parents and child, or showing empathy, and her facial expressions don't match her actions. In one case, where the mother was crying because her kids weren't going to be able to live with her, Judge Jimenez tried to show empathy and help the mom to understand, but her facial expressions didn't reflect such efforts.

Apart from your specific observations about the judge, did you observe anything else that might help to improve the experience of court users?

If you were to appear before this judge, would you have confidence that this judge would treat you fairly? Why or why not?

If I were to appear before Judge Jimenez, I would trust that she would make the best decision based off of the suggestions of my attorney and other parties in the court.



Report of Courtroom Observations

Report 4

Date: 07/30/2020

Location: Salt Lake County -
West Jordan Juvenile Court

Proceeding: Juv Court

Neutrality

How would you describe this judge's ability to be neutral, principled, and consistent?

Very plain blank wall behind the judge, as opposed to the normal flags, podium, etc., somewhat detracted from the decorum of the courtroom environment. As the day wore on, it became very evident that the plain background was not a deterrent; the strong personality and professional demeanor of the judge, alone, was enough to overcome what initially looked like a detractor. Self-deprecating humor was used to get over the bumps caused by the virus changes to courtroom procedures. The judge did not appear to be impressed or swayed by a defendant who appeared in a long sleeved white shirt and tie. Although the mother may have dressed her son for success, my impression was it made no difference to the judge. For whatever reason, the judge had not pre-reviewed a probation report prior to the hearing. The pause for her to read the lengthy report somewhat detracted from the flow of the hearing. In all other instances it was clear that the judge had in fact reviewed the material prior to the hearing. The judge was very patient with the delays caused by individuals who had difficulty logging on. She used her expertise to assist them.

Respect

How would you describe this judge's respect for people and their rights?

Judge was formal but approachable which was very appropriate for a juvenile court environment. Her voice and facial expressions added gravitas to the courtroom proceedings. Judge's facial expressions were helpful both from a professional and a human relations point of view. This was fostered by the fact that she did not wear a mask. I cannot emphasize enough how well Judge Jimenez included everyone in the proceedings when future court dates were being discussed. She made sure that the dates were compatible with the defendant and parent's schedules. Eye contact between the judge and the various people on videos was the best they could be expected with regard to the video/audio hearing constraints. The judge handled all the changes required by the virus as normal and routine courtroom procedures like a pro.

Voice

How would you describe this judge's skill at providing the participants a voice in the proceedings?

She took pains to assure that she heard from everyone and that everyone had the opportunity to participate. In an, in my opinion, unusual move, the judge used the defense attorney to delineate the rights available to her client, the defendant. In a normal courtroom, the judge would have done this, to include questioning with respect to understanding. Interesting that the defense attorney, while stating the rights, stopped to correct the defendant who was acting "goofy." The judge worked very well with an interpreter in the courtroom. She was very patient and accommodating for the verbal interaction that was necessary.



Report of Courtroom Observations

Additional Questions

Understanding that the Judicial Performance Evaluation Commission will ultimately recommend that the voters retain a judge or not, is there anything else you would like the commission to know about your experience observing this judge?

Apart from your specific observations about the judge, did you observe anything else that might help to improve the experience of court users?

If you were to appear before this judge, would you have confidence that this judge would treat you fairly? Why or why not?

My impression was that Judge Jimenez is the master of her courtroom, if you will. And, were I a juvenile, I would have no hesitation to appear in her courtroom.



Public Comments

Members of the public who have experience with a judge may submit comments to the commission.

Date Received	Comment
---------------	---------

No Public Comments Received



How to Read the Results

The results are shown in both graphs and tables. Each judge's scores are shown along with a comparison to other judges who serve at the same court level. The comparison group is called "Juvenile Court" on the charts.

The statutory category scores and the procedural fairness survey score represent average scores on a scale of 1 (low) to 5 (high). Responses from all survey respondent groups contribute to the average score shown for each category, with the exception of Legal Ability. Only attorneys answer the Legal Ability questions.

What does it take to "pass"?

The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption that the judge meets or exceeds performance standards from the Commission. That is, if a judge scores an average of 3.6 in each of these categories (including Procedural Fairness, as outlined below), the Commission will vote that the judge meets or exceeds performance standards unless it can articulate a substantial reason for overcoming the presumption. Similarly, if a judge fails to receive a 3.6 in a category (including Procedural Fairness), the Commission will vote that the judge does not meet performance standards unless it can articulate a substantial reason for overcoming the presumption.

To determine whether the judge passes the Procedural Fairness standard, the Commission considers only data collected as part of the performance evaluation. Judges will receive either a Pass or Fail in procedural fairness, and this determination will be made by the Commission only during the retention cycle.

Respondents are asked whether or not they think the judge should be recommended for retention only during the retention cycle. For midterm evaluations, respondents are asked whether they think the judge would benefit from added training or education.



Tab 7

Agenda

GREEN PHASE WORKING GROUP

REPORT AND RECOMMENDATIONS TO THE JUDICIAL COUNCIL AND SUPREME COURT REGARDING ONGOING USE OF VIRTUAL MEETING TECHNOLOGY TO CONDUCT COURT PROCEEDINGS

October 14, 2022



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REPORT AND RECOMMENDATIONS TO THE JUDICIAL COUNCIL AND SUPREME COURT REGARDING ONGOING USE OF VIRTUAL MEETING TECHNOLOGY TO CONDUCT COURT PROCEEDINGS

Executive Summary

The Judicial Council directed the Green Phase Working Group (GPWG) to study the ongoing use of virtual meeting technology to conduct court proceedings. The GPWG now submits the following report and recommendations for the Council's consideration.

- The use of virtual hearings to conduct court proceedings is accompanied by benefits and drawbacks, which must be identified, monitored, and balanced to best ensure that the courts continue striving to provide the public an open, fair, efficient, and independent system for the advancement of justice.
- A 2022 survey of Utah court users shows an overwhelming preference for the continued use of virtual hearings across court user types and age groups in district, juvenile, and justice courts.
- After careful study, the GPWG favors an approach that prioritizes judicial discretion in determining whether a hearing will be in person or virtual and allows court patrons to request to participate in a different manner.
- Recommended best practices for continued use of virtual hearings revolve around adequate notification of which hearings are intended to be conducted virtually, education and technical assistance to overcome technological and user-centric barriers, clear communication regarding decorum expectations, and continuing coordination with patrons, practitioners, the public, and other stakeholders.

Introduction

During the COVID-19 pandemic, virtual meeting technology allowed the Utah judiciary to continue striving to provide the public an open, fair, efficient, and independent system for the advancement of justice, even while public health considerations significantly restricted in-person gatherings. Judicial officers and court staff have developed proficiency in the logistics of scheduling and conducting virtual hearings, which has revealed benefits and drawbacks related to using virtual meeting technology for court proceedings.

The Judicial Council directed the Green Phase Working Group (GPWG)¹ to study the matter and develop recommendations regarding the ongoing use of virtual meeting technology to conduct court proceedings. While virtual hearings will undoubtedly continue to be an important tool for the judiciary, the tool's effectiveness varies based on the situation and the parties involved. The goal has been to ascertain how virtual meeting technology can be employed into the future to advance the judiciary's mission without sacrificing the effectiveness inherent in in-person proceedings.

This report:

1. identifies prevalent benefits and drawbacks of virtual hearings;
2. explores the effect of virtual hearings on access to justice;
3. addresses technology considerations;
4. presents aggregate court user feedback on the use of this technology; and
5. recommends best practice considerations moving forward.

Recommendations from the GPWG are noted with a blue background throughout the report and are listed again at the end of the report.

Definitions

"Virtual hearing" means a court proceeding where the judicial officer, court staff, parties, and attorneys simultaneously appear and participate through the use of virtual meeting technology from different physical locations.

"Hybrid hearing" means a court proceeding where some participants are present together in the physical courtroom while other participants simultaneously appear and participate in the proceedings through the use of virtual meeting technology from a different physical location.

"Virtual meeting technology" means a software platform that enables more than one individual to simultaneously participate in the same meeting from different physical locations.

¹ **Appendix A** contains a list of GPWG members and staff.

Benefits and Drawbacks of Virtual Hearings

Virtual hearings have been critical to the operation of the judiciary during the pandemic. The use of technology allowed the courts to overcome the all-or-nothing choice between fully restricting access to the courts or exposing patrons, court staff, and judicial officers to a little-understood, highly contagious and deadly disease. Like any new technology, the benefits of virtual hearings came with drawbacks. The judiciary has learned a great deal about the utility and efficacy of virtual hearings since they became the default in 2020. Table 1 below outlines examples of the benefits and drawbacks of virtual hearings, as experienced by judicial officers, court employees, and court users throughout the state.

BENEFITS	
Access to Courts	<ul style="list-style-type: none"> • Some people will be able to attend a hearing who otherwise would not be able to do so. • Virtual hearings accommodate people who do not have a driver license but have access to virtual meeting technology. • The judiciary can draw from a larger pool of interpreters if interpreters do not have to attend court in person. • Extended family members and friends are able to attend proceedings such as adoptions. • News media outlets are able to cover hearings more regularly and across greater geographic diversity.
Convenience	<ul style="list-style-type: none"> • Court patrons can appear in court without needing to take time from work or home responsibilities. • Virtual jury selection is less disruptive to potential jurors.
Financial Savings	<ul style="list-style-type: none"> • Court patrons are less likely to lose wages for missing work if they are able to appear remotely. • Court patrons may avoid the need to pay for childcare or travel expenses to and from the courthouse. • Litigants may avoid having to pay their attorneys to travel to court or wait at the courthouse for their case(s) to be called.
Legal Representation	<ul style="list-style-type: none"> • Practitioners may be able to represent more clients if they travel less for hearings. • Litigants can draw from a larger pool of attorneys if attorneys do not have to travel to different geographic regions of the state / county / city. • Underserved communities have greater access to pro bono representation. • Attorneys in some civil cases may be able to have better communication with their clients in a virtual setting where the client better understands that the communication will be focused and efficient.
Efficiency	<ul style="list-style-type: none"> • Court patrons may spend less time unable to fulfill other responsibilities while waiting for their hearing.

	<ul style="list-style-type: none"> • Practitioners are able to accomplish more work when spending less time traveling to hearings / sitting in a courtroom waiting for their case(s). • Virtual hearings may be a more efficient use of resources than transporting people from jails, prisons, or other secure facilities.
Safety	<ul style="list-style-type: none"> • Virtual hearings offer an increased feeling of safety for victims of crime, petitioners for protective orders and civil stalking injunctions, parties in high conflict domestic cases, volunteers and others. • There are fewer law enforcement and public safety concerns than are involved with physically transporting inmates to a courthouse.
Comfort	<ul style="list-style-type: none"> • Some court patrons find appearing remotely for proceedings more comfortable / less intimidating, allowing them to be more authentic
Judicial Preference	<ul style="list-style-type: none"> • Some judicial officers prefer virtual jury selection over in-person jury selection.
Information	<ul style="list-style-type: none"> • In some kinds of cases, courts receive additional information to use in decision-making when people who would not be able to participate in person are able to appear virtually.
DRAWBACKS	
Loss of Court Efficiency	<ul style="list-style-type: none"> • For certain hearings, conducting the hearing virtually may take longer than doing the same work in person. • Fewer opportunities for counsel to visit while in the courthouse may result in fewer cases being settled on terms acceptable to the parties. • It can be difficult to negotiate with another party through a virtual platform.
Lack of Decorum	<ul style="list-style-type: none"> • Because virtual hearings are often viewed as less formal, some participants show a lack of decorum reflected in their dress, location when appearing, other activities going on in the background, interruptions, and lack of civility.
Lack of Focus	<ul style="list-style-type: none"> • Court participants sometimes try to multitask during virtual hearings and do not give their full attention to the court proceeding.
Constraints on Other Actions	<ul style="list-style-type: none"> • It is difficult or impossible to enforce certain court orders virtually. • It is difficult to serve parties who would be served at the courthouse if the hearing were in person. • It may be difficult to get defendants to report to jail when custody is ordered through a virtual hearing.
Resource Limitations	<ul style="list-style-type: none"> • Some jails are unable to accommodate the volume or timing of virtual hearings. • Lack of necessary equipment or insufficient access to the internet may limit or prevent some people from appearing through Webex.

Communication Friction	<ul style="list-style-type: none"> • Communication between attorneys and clients may suffer during virtual hearings and requires more planning to accommodate. • There are challenges using the Language Line (interpretation resource) in virtual hearings. • Obtaining victim and restitution information from prosecutors is more challenging in a virtual setting. • News media outlets obtain the highest quality recordings (particularly of higher profile case hearings) when recorded in person. • Judicial officers, attorneys, and jurors may miss important non-verbal cues that could be seen in person.
Technical Issues	<ul style="list-style-type: none"> • Technical problems sometimes interfere with hearings and may hinder access to court. • Virtual hearings use large amounts of bandwidth. • Interpretation sometimes suffers during virtual hearings. • The quality of the record may be diminished. • There is a learning curve for new participants.
Demands on Staff	<ul style="list-style-type: none"> • Non-IT staff are often required to provide impromptu technical support. • With the current system, scheduling virtual hearings requires additional work for staff.
Legal Concerns	<ul style="list-style-type: none"> • Virtual hearings may present constitutional deficiencies for some criminal hearings. • It can be difficult to judge the credibility of witnesses or ensure that witnesses are not impermissibly relying on extrinsic sources or aided by other individuals when providing testimony (despite amending the rule to include additional language in the oath). • It can be difficult to know whether another person is in the room with a virtual participant, trying to influence that participant.

Table 1 – Benefits and Drawbacks of Virtual Hearings

Access to Justice

Access to justice has been, is, and will continue to be a primary consideration when assessing court operations, including the use of virtual meeting technology. One of the benefits of virtual hearings has been an increase in access to justice for many people.

- Some parties find that it is much easier to participate in court proceedings virtually than to appear in person. Through the use of virtual hearings, barriers such as arranging transportation, finding daycare, or taking time off from work or other life responsibilities are reduced or eliminated. For some people, these barriers are the difference between being able to access court services and having to delay, or even forgo, court involvement, some of which affects physical safety. For others, these barriers could be the difference between a default judgment and the ability to meaningfully participate in their case. In some instances, it will be the difference between participation in an occupancy hearing and becoming homeless.
- Virtual hearings can reduce barriers by allowing court patrons to feel safe by appearing in a comfortable place and in a different location than the person they fear. Though a court patron in this situation may be capable of attending an in-person hearing, such a patron may reasonably view virtual hearings as increasing their access to the courts.
- Virtual hearings provide greater access for some court patrons and practitioners with disabilities. At least one attorney explained that he is often not able to attend in-person hearings because of his disabilities. The use of virtual hearings has allowed him to significantly expand his law practice because he is able to attend many more proceedings. This provides greater access to the attorney and his clients.
- For many people, virtual hearings provide greater access to justice simply because they are more convenient. While mere convenience may not override other considerations, it is still an important factor.

There are also aspects of virtual hearings that can impede access to justice. These obstacles must be understood and considered to ensure that the judiciary provides the best opportunities for the public to access court services.

- Some court patrons lack sufficient internet access, have limited means to purchase or maintain the necessary hardware, or are not comfortable with technology generally. This can impair or completely prevent the individual from appearing or effectively advocating their position in the case.
- Even for the users most comfortable with virtual hearings, technical problems outside of the individual's control can present barriers to accessing justice. Virtual platforms obviously depend on reliable networks and sufficient bandwidth. Some court patrons may use a less-than-optimal network that disrupts the hearing, making it difficult for the court to hear them and difficult for the patrons to follow what is taking place in the hearing. The demand for internal network bandwidth by court staff and judges

sometimes exceeds supply, causing disruptions to virtual hearings and other network uses.

- Virtual hearings are also more prone to create issues with the quality of the audio recording of the court proceedings. Disruptions from other court patrons in the same hearing, bandwidth constraints and fluctuations, and sometimes limitations of the virtual platform itself have compromised the quality of the audio recordings that constitute “the record.” Recording quality concerns span the spectrum from minor annoyance in some cases to rendering the record completely useless during the transcription process. The diminishment of reliable recording quality is a clear and significant problem, particularly if issues in a case evade meaningful and complete appellate review due to a compromised recording.

The platform providers and our internal IT team have done much to improve the quality of the virtual hearing recordings and specific additional improvements are anticipated to be completed in the near future. With support from the Judicial Council, the IT and facilities teams are installing kiosks in courthouses throughout the state that provide reliable access to virtual hearings. The IT team has also been working hard to secure expanded bandwidth and provide support and training along with the necessary hardware and software.

Technology Considerations

Instituting virtual hearings in the Utah courts at the onset of the pandemic required the judiciary to purchase and roll out new technology, train judicial officers and employees, collaborate with system partners, and increase IT team support. A forward-looking and effective virtual hearings strategy will require additional and upgraded hardware and software, continual network monitoring and improvements, and significant time to fully implement.

Hardware and Software

The Utah courts have invested significant time and resources into establishing a baseline hardware and software foundation for conducting virtual hearings. These previous investments, coupled with planned upgrades, position the courts to continue using virtual and hybrid hearings into the future.

Early in the pandemic, the Utah courts determined that Webex was the virtual meeting technology platform best suited to the needs of the judiciary. The number of Webex accounts available to judicial officers and court employees has gradually increased since the beginning of the pandemic as licensing needs and available resources have allowed. The judiciary currently has approximately 1,900 Webex licenses for state and local courts. Most of the state courts' computers have been upgraded to meet the minimum standards for Webex, but some outdated computers remain in use and will need to be replaced.

Beyond the necessary software licensing and the computers to operate that software, other hardware and technology upgrades in the courtrooms statewide have been necessary to conduct efficient and effective virtual and hybrid hearings. Numerous courtroom upgrades such as rolling media carts, additional monitors to display proceedings to the parties, and video cameras have been purchased and installed to support both virtual and hybrid hearings. In the near future, additional upgrades will be installed in courtrooms to better facilitate remote appearances, the presentation of evidence, and other related functionalities. Important additional upgrades to hardware and software are planned including: enabling simultaneous interpretation; allowing Webex audio to be recorded directly to the courts' official audio recording platform "For The Record" (FTR); and cloud migration of FTR data.

Network Requirements

The increased use of virtual court hearings and meetings has at times placed a nearly overwhelming load on the courts' network capabilities and bandwidth. This voluminous data transmission burden has resulted in slow network response times for critical systems to function well. It is anticipated that these challenges will not be fully resolved until an ARPA-funded² network upgrade is completed in December 2024. This upgrade is intended to optimize system performance through the creation of discrete network connections to route network traffic for the courts' internal applications (CORIS, CARE, etc.) separately from external applications (Webex, Google services, etc.).

² "ARPA" is the American Rescue Plan Act of 2021 (H.R. 1319), enacted on March 11, 2021.

Other Technology-related Considerations and Challenges

While the advancements and expanded use of technology are critical to the successful ongoing use of virtual and hybrid hearings, there are some challenges that the courts should anticipate and prepare for:

- judicial officer and court staff training will remain a significant need;
- reliance for support from the IT team will increase and add additional pressures on a small support staff tasked with handling high support volume;
- supply chain issues for hardware and devices will likely present ongoing challenges into the foreseeable future; and
- upgrades such as Webex kiosks, permanent cameras in all courtrooms, an accessible and intuitive public portal, FTR migration to the cloud, simultaneous interpretation, and other changes will be implemented gradually through December 2024, which will require the courts to adopt some short-term solutions while coping with the necessary time to complete these critical technology upgrades.

GPWG Recommendation

Continue to invest in IT staff necessary to support virtual and hybrid hearings and to provide training to employees, judges and commissioners.

Court User Survey

During the summer of 2022, the Utah State Bar's Access to Justice Commission, in partnership with the Utah Judicial Council, conducted a limited survey of court users (primarily in the Third District) about their experiences with virtual hearings from the fall of 2021 through the spring of 2022. The results, which provide useful information for the judiciary, are found in "*Utah Survey of Court Users: The Impact of Remote Hearings on Access to Justice, June 2022.*"³

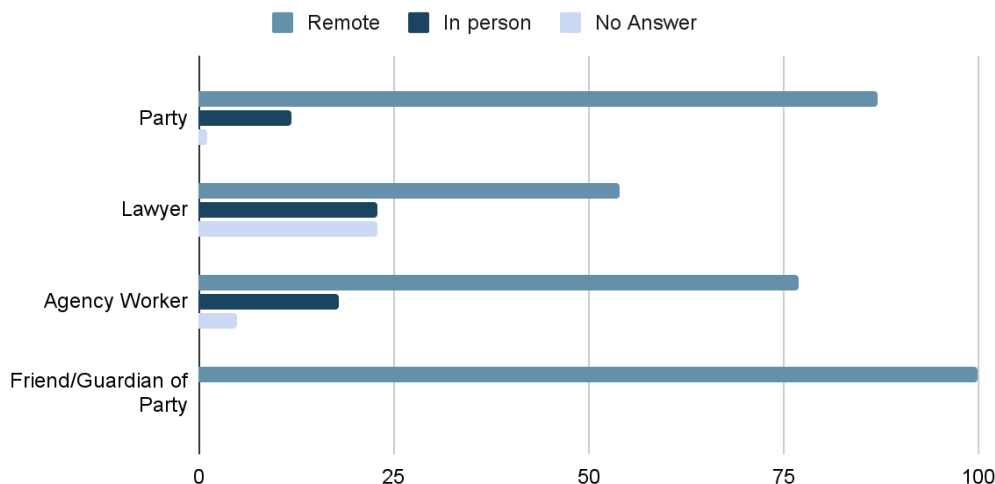
At the time the report was published, a total of 212 individuals had provided survey responses, including 116 parties, 68 lawyers, 22 government agency workers, and 5 friends/guardians of a party. These individuals participated in a variety of hearings in district court (criminal and civil), juvenile court (delinquency and child welfare), and justice court (criminal, traffic, and small claims).

The most conclusive survey result was that 75% of respondents across all types of survey participants expressed a preference for virtual hearings.⁴ Parties were the most likely group to prefer virtual hearings (87%), followed by agency workers (77%) and lawyers (54%).⁵ See Figure 1.

While the preference of court users is only one consideration among many, it is strong evidence that there is value in conducting certain court proceedings through virtual hearings.

Figure 1. Hearing Preference by Type of Participant

Source: Utah Survey of Court Users: The Impact of Remote Hearings on Access to Justice, June 2022.



³ See **Appendix B** for the Utah State Bar Access to Justice Commission full survey report.

⁴ Respondents were asked "For your court hearing or activity today, which do you prefer?" and were given two choices: "I prefer participating in person at the courthouse" and "I prefer participating remotely (by video, phone, or virtually)."

⁵ 100% of "friends / guardians of party" preferred virtual hearings, though the sample size of this group was five individuals.

Judicial Discretion vs. Patron Preference

There are many approaches the Judicial Council could adopt regarding the ongoing use of virtual hearings. In discussing various approaches, the GPWG weighed three main considerations: patron preference, consistency, and judicial discretion.

Consistency. There is value in having a consistent approach throughout the state. Court patrons know what to expect and can plan accordingly. Attorneys know whether a hearing is likely to be quick because it is virtual or whether the hearing will involve significant travel time to and from the courthouse. This is especially helpful for attorneys who practice in front of multiple judicial officers in different districts. It matters even more for non-profit legal service providers; they provide legal services across the state and have minimal administrative support to keep track of and cope with varying requirements. These agencies and other stakeholders have expressed a preference for statewide consistency.

Patron Preference. Public perception and participation are significantly impacted by the type of hearing. When attorneys, parties, and other court patrons can choose whether to access court remotely or in person, they are better able to manage their work and family obligations, schedules, finances, transportation, and personal safety. Court administration in Ohio has found that court users rank the courts higher in access and fairness when they are allowed to choose the venue because it allows them to participate in the process instead of just having the court process happen to them.

Judicial Discretion. Every hearing involves unique circumstances and people, and the judicial officer is in the best position to determine whether a virtual hearing or in-person hearing best serves the interests of justice given those unique factors. Additionally, our state comprises diverse geographic regions with unique strengths, needs, and characteristics. It is difficult to craft a single approach to determining whether hearings will be held virtually or in person that adequately serves the needs of all districts. Maximizing judicial discretion also allows judges to consider the impact virtual or in-person hearings have on their individual staff members.

The GPWG discussed and ultimately rejected an approach used by some states that establishes presumptions or mandates for every type of hearing. Though this approach establishes consistency, it almost completely ignores judicial discretion and the reality that every case is different. The GPWG also worried that complete judicial discretion discounts the feedback received from external stakeholders and leads to practices that are inconsistent for similar types of hearings.

In an effort to give appropriate weight to all three of these considerations, the GPWG recommends the following approach.

1. **Judicial discretion**

Judicial officers consider the factors discussed below in “Considerations for Judicial Officers” and other information relevant to the case, hearing, and parties and then determine whether a hearing will be in-person or virtual.

2. **Court Patron Requests**

- a. Where an in-person hearing is scheduled and a participant requests that they be allowed to participate virtually, the judicial officer must allow them to participate virtually if the participant shows good cause, which permission shall not be unreasonably withheld.
- b. Where a virtual hearing is scheduled and a participant requests that they be allowed to participate in person, the judicial officer must allow them to participate in person if the participant shows good cause, which permission shall not be unreasonably withheld.

3. **Good Cause**

A good cause standard should be established, as discussed below in “Amending Court Rules.”

4. **Court Technology**

- a. Courtroom technology must provide remote participants the same opportunity as in-person attendees to hear, view, and participate in the court proceeding.
- b. Each district should develop a digital evidence plan to standardize how digital evidence is managed within the district.

5. **Remote Attendee Obligations**

- a. A person who attends a court proceeding virtually must use a device and an internet connection that will contemporaneously transmit video and audio with sufficient quality to ensure a clear, verbatim record of the proceeding. If that technology is unavailable, the person must attend the court proceeding in person. The judicial officer may choose to require only audio transmission.
- b. Remote attendees must observe the same courtroom decorum as those attending in person, including appropriate courtroom attire, behavior, and language.
- c. Remote attendees must appear from a location that does not disrupt the court proceeding and allows the attendee to participate without distractions.
- d. Attendees must never appear in a court proceeding while operating a vehicle.
- e. Attorneys appearing remotely must be on time and not delay a court proceeding by overscheduling remote appearances.

GPWG Recommendation

Judicial officers should have discretion to determine whether a hearing will be in person or virtual. If a court patron requests to participate in a way other than the way identified by the judicial officer and demonstrates a valid reason, the judicial officer should be required to grant the request. Court rules should be adopted to implement this approach.

Considerations for Judicial Officers

Juvenile Courts

Addressing the individual needs of children and families is one of the foundational components of the Utah Juvenile Court. This approach extends to and influences decisions on appropriateness and effectiveness of conducting a hearing in-person or virtually. Maintaining judicial discretion in making these decisions is vital to preserving the defining characteristics of the juvenile court and ensuring an individualized approach to each case.

While the decisions on in-person and virtual hearings should be made based on unique circumstances of each case and each hearing, some juvenile court proceedings are more suitable to conduct virtually while other proceedings are more suitable for an in-person setting.

Virtual

The following juvenile court hearing types may be more appropriate to conduct virtually.

- Delinquency:
 - Detention Hearings
 - Expungements
 - Entire delinquency cases (*contingent on the factors listed below*)
 - Entire delinquency cases where minors are in an out-of-county placement
- Child Welfare:
 - Custody of Refugee Minor cases (CCS Petitioner)
 - Immigrant Status cases
 - Child Welfare Reviews (*contingent on the factors listed below*)
 - Child Welfare Post Termination Reviews

In Person

The following juvenile court hearing types may be more suitable to conduct in-person.

- Delinquency:
 - Trials
 - Evidentiary Hearings
 - Hearings on Motions to Suppress that include testimony
 - Competency hearings
 - Order to Show Cause/Contempt hearings
 - Criminal Information or Bind over cases that involve evidence
 - Any case where a party requests an in-person appearance
- Child Welfare:
 - Trials
 - Evidentiary hearings
 - Shelter hearings
 - Adjudication/Pretrial hearings
 - Disposition

- Permanency hearings
- Voluntary Relinquishment
- Order to Show Cause/Contempt hearings
- Any case where a party requests an in-person appearance
- Other Cases/Hearings
 - Treatment Courts
 - Petitions for Marriage
 - Judicial Bypass petitions
 - Emancipation petitions
 - Protective Orders
 - Adoption (*with an option for virtual attendance for family members out of the area*)

In making decisions on scheduling an in-person or virtual hearing, juvenile court judges should consider:

- Individual needs of youth and parents:
 - access to technology, including availability of Webex kiosks or other similar accommodations to facilitate participation in a virtual hearing;
 - transportation and travel challenges, including distance of residence from the courthouse (out of county, etc);
 - accommodation for youth enrolled in school; and
 - accommodation for working parents.
- Case Circumstances:
 - feasibility of a virtual hearing or transport for an incarcerated parent;
 - whether a case is high-profile;
 - whether a youth or parent would benefit from face-to-face interaction with the judge;
 - youth or parent lack of engagement;
 - youth is in a remote out of home placement and transport is not feasible; and
 - youth or parent display a lack of understanding of court processes or orders.
- Hearing Circumstances:
 - whether the hearing is a procedural or substantive type hearing;
 - whether evidence is being presented; and
 - whether witness testimony is required.

Juvenile court judges should additionally consider comfort level, preferences, and health accommodations of parties and teams. It may be beneficial at the time the next hearing is being scheduled to provide an opportunity for parties and participants to express their preferences regarding an in-person or virtual setting.

GPWG Recommendation

Juvenile court judges should consider the factors listed in this section when deciding whether a hearing will be in person or virtual.

Justice and District Courts

Post-pandemic, justice court judges and district court judges will continue to have the option to use in-person and virtual hearings to effectively accomplish the mission of the courts. While the state courts IT department has made significant improvements to the technology and hardware that make virtual hearings possible, the judiciary should continue to make additional investments in technology to better accommodate virtual hearings, facilitate hybrid hearings, and improve the evidence-presentation process for all hearing types in every courtroom throughout the state. Regardless of the type of hearing, an accurate audio record must be maintained.

Judicial discretion is paramount when deciding whether to hold an in-person or virtual hearing. Given the unique characteristics of each court, court location, and case, district court judges must have individual discretion to determine which hearing type will best promote the open, fair, and efficient administration of justice in each proceeding. In-person and virtual hearings offer different benefits and efficiencies, so judges will need to decide whether proceeding in person or virtually will best address the unique circumstances of each hearing.

It is also important to understand the technical limitations that impact virtual hearings. For example, some county jails have limited capacity for virtual hearings and cannot accommodate the number or length of virtual hearings a court may desire to hold.

The GPWG recommends justice court judges and district court judges consider principles of procedural fairness, factors outlined in court rule, and the following factors where relevant (listed in no particular order):

- Does an existing statute, rule, or principle of law require an in-person hearing? Can the mandatory nature of that requirement be waived by the parties (or by a single party)?
- Do all parties have sufficient access to technology for virtual hearings?
- What is the substantive or procedural importance of the hearing?
- Which type of hearing best promotes access to justice for the parties?
- Are the parties more comfortable with a virtual hearing (e.g., high-conflict domestic cases, protective order hearings, and civil stalking injunction hearings)?
- Does the type of hearing allow the parties to have access to counsel of their choice?
- Would the parties or their counsel be required to travel long distances for an in-person hearing?
- Is there a significant cost to a party for an in-person hearing (e.g., money, time, lost work, child care, cost of transportation from jail for civil proceeding, etc.)?
- Do the parties have a stated preference for a certain type of hearing? If so, how and when do parties state their hearing-type preference?

- Are the judge and court staff able to manage a virtual or hybrid courtroom effectively?
- Does the hearing make efficient use of judicial resources, facilities, and court personnel?
- Will a party be prejudiced from requiring an in-person, virtual, or hybrid hearing?
- Will the type of hearing unreasonably delay the progress of the case, increase expense, or complicate resolution of any issue?
- Will the type of hearing unreasonably limit the court's ability to assess credibility, voluntariness, or comprehension?
- Is there a fairness concern because one party has easier access to the courthouse, or greater facility with technology, and is seeking a strategic advantage?
- Does the type of hearing allow for greater access to effective interpretation services?
- Is there enough time to give notice for people to make appropriate arrangements—especially where there is a change from one hearing type to another?
- Does the type of hearing—particularly virtual and hybrid hearings—allow parties to share documents?
- In virtual and hybrid hearings, will the participants have prior or simultaneous access to documents, photos, etc., that are submitted to the courtroom?

GPWG Recommendation

Justice court judges and district court judges should consider the factors listed in this section when deciding whether a hearing will be in person or virtual.

Appellate Courts

The appellate courts have only one hearing type to consider in evaluating moving into a post-pandemic judicial environment—oral arguments. Oral arguments never have witnesses and very rarely utilize any form of evidentiary exhibits.

Likewise, procedural fairness in appellate hearings is accomplished by parties being able to clearly present their arguments and communicate with the members of the bench, and respond in rebuttal where appropriate, to opposing counsel's arguments. This of course has historically been accomplished by in-person oral arguments. Throughout the COVID-19 pandemic this was accomplished entirely via virtual hearings.

One aspect of procedural fairness that was not considered prior to the pandemic was that our appellate courts hear cases from all eight judicial districts while being housed in the Third District. This presents the question: how does this geographical arrangement impact litigants? For example, represented parties of an appeal originating in the Fifth District would possibly pay more for their appeal as their counsel is required to travel several hundred miles to Salt Lake City. Allowing for virtual appearances for these parties and attorneys, if able to be done equitably, would eliminate a procedural hurdle for the geographically distant party and increase procedural fairness.

Utah's appellate courtrooms are currently undergoing a significant technology overhaul that will allow both parties, as well as the appellate judges, to appear in person or virtually. The

technology allows one party to appear virtually while the other appears in-person, and allows one or more judges to appear remotely while the others appear in-person.

Considerations for Deciding on In-person vs. Virtual Oral Argument

- What are the locations of parties and the costs of travel? Does requiring one party to travel a significantly greater distance to the courthouse create fairness issues?
- What are the unintended impacts of having appellate courts that operate from only one courthouse in the state? Does this geographic reality impact decisions to file appeals?
- Would in-person or virtual oral argument increase the diversity of the appellate bar? Would it increase the diversity of the appellate bench?
- Which method(s) do the parties prefer for making their oral arguments?
- Which method does the appellate bench prefer for holding oral argument? Because oral argument is designed to be an opportunity for judicial officers to ask questions presented in briefing, does this preference hold more weight than the preference of the parties?
- Does the type of case matter in making the decision on remote vs. in-person?

GPWG Recommendation

Appellate court judges should consider the factors listed in this section when deciding whether a hearing will be in person or virtual.

Recommended Best Practices for Virtual Hearings

The experiences of judicial officers and court staff with virtual hearings over the past two years helped the GPWG identify best practices for the ongoing use of virtual hearings. The following pages of this report provide both court-wide recommendations and recommendations for specific groups including judges and court staff, court patrons, attorneys, and the prison and jails.

Court-wide Recommendations:

1. Each court location should update judicial officers, court staff, patrons, attorneys, and community partners (e.g., the prison and jails) on relevant Webex updates and process changes. This may include a page on the court website for updates and regular revisions to posted Webex guides.
2. Each court calendar should clearly indicate if a hearing is scheduled to be held in person or through a virtual or hybrid hearing. If the calendar setting is for a virtual or hybrid hearing, the Webex link for the hearing should be included on the calendar for the parties, public, and media to access, as appropriate (i.e., some hearings — such as adoptions — are not open to the general public or media and would therefore not have a publicly-accessible Webex link).
3. A party who shows up at the courthouse for a virtual hearing — whether due to calendaring confusion or inability to access a virtual hearing on their own — should be provided access to participate in the virtual hearing. To facilitate this access, kiosks should be available at every courthouse for patrons to participate in virtual hearings as needed.
4. To address current challenges with the courts' network bandwidth, it is recommended that court employees working at a court location avoid using the wireless network and instead connect to the wired network whenever and wherever possible.
5. Court employees working at the same court location who attend a virtual meeting should gather as a group in a single location to attend the meeting from a single device and network connection as this reduces bandwidth pressure on the courts' network.
6. The public wireless networks in each court location share a statewide connection, resulting in limited capacity to support parties, attorneys, and members of the public who may expect to use the courts' public wireless network to attend remote hearings. These court participants should connect to virtual hearings using networks other than the courts' public wireless networks at the courthouse.

Recommendations for Specific Groups – Judicial Officers & Court Staff:

JUDICIAL OFFICERS & COURT STAFF		
1	Notices: <i>Contents</i>	<p>All notices for virtual hearings should include at a minimum the following information (taking into consideration Rule 43 of the Utah Rules of Civil Procedure):</p> <ul style="list-style-type: none"> • the date and time of the hearing; • the type of hearing – virtual, hybrid, or in-person; • the purpose of the hearing; • how to join the hearing, including: <ul style="list-style-type: none"> – the Webex link (or how to access that link); – if permitted, how to call-in for the hearing; – whether participant video must be enabled; – how to access virtual hearing kiosks at a court location; • what to expect at a virtual hearing; • how to file, serve, and present evidence; • what patrons should tell their witnesses; • contact information for technical assistance (<i>see Recommendation #5</i>); • the process for submitting and presenting evidence (<i>see Recommendation #8</i>); and • how to request interpretation or accommodation (<i>see Recommendation #12</i>).
2	Notices: <i>Plain Language</i>	Notices should be easy to understand (i.e., in plain language, avoiding abbreviations or having standard abbreviations; etc.).
3	Notices: <i>Hearing Changes</i>	If a hearing is changed from in person to virtual or vice versa after notice was sent, a new timely notice should be provided to all participants.
4	Notices: <i>Self-Represented Parties</i>	If a self-represented party has provided an email address, notices should be sent by email. When possible, MyCase should be the preferred method for such communication.
5	Technical Assistance for Virtual Hearing Participants	<p>Each court location should have a technical assistance phone number that is included on every hearing notice. Ideally this number should be specific to each court location, but at a minimum should connect the participant to a qualified individual who can:</p> <ol style="list-style-type: none"> a) assist the participant to resolve technical issues; AND b) communicate immediately with the judicial officer's judicial assistant that the participant is attempting to connect to the virtual hearing but is experiencing technical issues.
6	Calendar Capacity	Virtual hearings may take longer and should be scheduled appropriately.

JUDICIAL OFFICERS & COURT STAFF		
7	Webex Greeting	Participants should be greeted by a screen in Webex to confirm for participants and the public that they are in the right virtual location. For example, the screen could display the name of the judge, the time hearings are scheduled to begin, and what to do while waiting.
8	Instructions: <i>Evidence</i>	Judicial officers and judicial assistants should provide participants with clear instructions on how to submit and present evidence to the court during a virtual hearing.
9	Instructions: <i>Expectations</i>	If possible, any specific expectations of the parties should be clearly communicated to the parties in advance (e.g., if a camera is required for the party's participation in the hearing, if parties are expected to have spoken/negotiated before the hearing or if breakout rooms will be available for that purpose, etc.). These expectations could be provided in a flier, district-level standing order, or the Judicial Council may want to create a rule.
10	Instructions: <i>Hearing Processes</i>	The judicial officer or judicial assistant should provide hearing-specific instruction on virtual hearing processes (e.g., how a party/attorney should inform the court when their case is ready to be called). "How to" materials could be created for attorneys new to virtual hearings (how to find the calendar/hearing information, tips on how to communicate with clients if they are not in the same location during the hearing, how to prepare clients, how interpretation works during hearings, communicating with opposing side in advance of the hearing, use of breakout rooms, how to present evidence, etc.)
11	Instructions: <i>Use of Webex</i>	The courts should provide clear instructions explaining how to use Webex. "How to" materials could be created for all Webex users. Materials for attorneys new to virtual hearings might include how to find the calendar/hearing information, tips on how to communicate with clients if they are not in the same location during the hearing, how to prepare clients, how interpretation works during hearings, communicating with opposing side in advance of the hearing, use of breakout rooms, how to present evidence, etc.
12	Interpretation & Accommodation	When an interpreter is needed, judicial assistants should make arrangements for simultaneous interpretation if possible (or direct the party or attorney on how to arrange for simultaneous interpretation). The process for requesting other accommodations should be clearly communicated to participants.
13	Ongoing Training	Judicial officers and judicial assistants should receive ongoing training on Webex and other necessary virtual hearing technology.

JUDICIAL OFFICERS & COURT STAFF		
14	Experience Sharing	The courts should provide regular opportunities for judicial officers, court staff, patrons, and stakeholders to share their feedback on the use of the virtual hearings.

Recommendations for Specific Groups – Court Patrons:

COURT PATRONS		
1	Decorum Expectations	<p>Participants SHOULD:</p> <ul style="list-style-type: none"> a) remember that a virtual courtroom is subject to the same standards of behavior and decorum as in-person court; b) dress appropriately for a court appearance; c) be focused on the proceedings by pre-arranging care for other obligations that may need attention during the hearing (i.e., children, pets, etc.); and d) if late for a hearing, remain in the Webex proceeding until the judicial officer has finished calling through the other scheduled hearings before alerting the judicial officer. <p>Participants SHOULD NOT:</p> <ul style="list-style-type: none"> e) speak over another party or an interpreter; f) interrupt when joining a virtual hearing that has already started (remain muted until their case is called); and g) eat, drink, smoke, or drive during the hearing.
2	Technology Expectations	<p>Participants SHOULD:</p> <ul style="list-style-type: none"> a) Location – plan on joining the virtual hearing from a suitable location that is quiet, private, and allows the participant to focus; b) Camera – have video enabled and be visible to the court when participating in a proceeding, choosing a camera angle that avoids background distractions; c) Lighting – avoid camera angles that position a window or other bright light behind the participant (this often results in poor video quality and obscures the participant’s face); d) Audio – be aware of and try to minimize background noises; e) Calling in on a non-smartphone – avoid joining a virtual hearing via a non-smartphone, as it will limit Webex functionality (e.g., the participant won’t be able to be moved into a separate virtual room to talk with an attorney); and f) Bandwidth – use a network with sufficient bandwidth for a stable connection to the virtual hearing OR use a computer kiosk at the courthouse to join a virtual proceeding.

Recommendations for Specific Groups – Attorneys:

ATTORNEYS		
1	Expectations	<p>Expectations for attorneys should be outlined and disseminated. For example, attorneys SHOULD:</p> <ul style="list-style-type: none"> a) Title & Name – ensure their Webex name displays their title followed by their full name (i.e., Defense Attorney Atticus Finch); b) Camera – have video enabled and be visible to the court when participating in a proceeding, choosing a camera angle that avoids background distractions; c) Audio – be aware of and try to minimize background noises, and use a quality microphone to help ensure an accurate record; d) Attire – dress appropriately for a court appearance; e) Simultaneous hearings – log into multiple simultaneous hearings only if the attorney can effectively manage participation in each hearing, ensuring appropriate, timely, and responsive communication with each court; and f) NEVER drive during an appearance.

Recommendations for Specific Groups – Prison & Jails:

PRISON & JAILS		
1	Stakeholder Meetings	<p>Stakeholder meetings should be held to discuss and establish best practices between the courts and the prison / jails, including:</p> <ul style="list-style-type: none"> a) communication processes to notify the correctional facility if a hearing will be in person or virtual so appropriate transportation or virtual appearance can be arranged; b) the need for each correctional facility to provide at least two Webex-equipped rooms per court calendar to facilitate attorney / client communication in a breakout room, while the court moves forward with other cases in the remaining room. c) the need for each correctional facility to have a dedicated phone that an interpreter can use to provide simultaneous interpretation during the hearing to an inmate with limited english proficiency.

Amending Court Rules

Court Rule Amendment Recommendations - Appearing in Court

A foundational principle of our pre-pandemic understanding was that appearing in court meant being physically present in the courtroom. In limited circumstances judicial officers and practitioners would utilize phone conferences, and, with exception to some in-custody first appearances taking place remotely from jails, video conferencing was seldom used across the state. As a result, most rules and practices did not contemplate the use of virtual meeting technology or—at a minimum—indicated a strong preference for in-person appearances. With the rapid advancement in courtroom technology experienced over the last several years, this strong preference for in-person appearances seems to be an increasingly outdated approach to the administration of justice.

Pursuant to the Utah Constitution, the Supreme Court is obligated “to adopt rules of procedure and evidence” and the Judicial Council is obligated “to adopt rules for the administration of the courts of the state.” Court rules are essential to the mission of the Utah judiciary to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law. Throughout the pandemic the interpretation of the meaning of this mission has evolved. The Supreme Court and Judicial Council amended or suspended application of certain rules to accommodate necessary pandemic-related changes to previously established practice. In large part, court rules are still built on a pre-pandemic understanding of the needs of judicial officers, court staff, and patrons. This section will provide recommendations our rulemaking bodies should consider when creating and amending rules in a post-pandemic judiciary.

Recommendations to Supreme Court

The Green Phase Workgroup acknowledges that many of the necessary changes found in this section implicate the direct authority of the Utah Supreme Court. As presented in *Judicial Discretion v. Patron Preference*, the GPWG recommends the Supreme Court establish a “good cause” standard that hearing participants must demonstrate in requesting to appear opposite the decision of the judicial officer. The GPWG recommends the Supreme Court charge its various advisory committees with defining the “good cause” standard through rule. The Supreme Court’s advisory committees are uniquely suited for this task because of their diverse practitioner composition, and practice of incorporating stakeholder comments into their decision-making process. Finally, the GPWG recommends that the Supreme Court establish an appeal process when a hearing participant believes a judicial officer is not appropriately applying the “good cause” standard as defined in the relevant procedural rules. Because the “good cause” standard may vary between procedural rule chapters, it will likely be necessary for each procedural rule chapter to define an appeal process.

GPWG Recommendation

The Supreme Court establish a “good cause” standard that hearing participants must demonstrate in requesting to appear opposite the decision of the judicial officer. The Supreme Court should define “good cause” and establish an appeal process when a hearing participant believes a judicial officer is not appropriately applying the “good cause” standard as defined in the relevant procedural rules.

Recommendations to the Judicial Council

During the pandemic, districts accommodated email filing for self-represented litigants who were not able to file electronically because in-person filing was not an option. That practice proved helpful to many self-represented litigants. The GPWG discussed whether the courts should continue to allow email filing by self-represented litigants. Due to the significant workload email filing adds to clerical staff, the GPWG recommends that all initial filings by self-represented litigants be made in person or via US mail. The GPWG also recommends that the Judicial Council amend its rules to specifically authorize self-represented litigants to make subsequent filings (after the initial filing) in a case through email. Notwithstanding the above, the GPWG recommends that a patron seeking a civil protective order or civil stalking injunction be allowed to file their initial request via email due to the significant access and safety concerns implicated in these proceedings.

GPWG Recommendation

All initial filings by self-represented litigants should be made in person or via US mail. The Judicial Council should amend its rules to specifically authorize self-represented litigants to make subsequent filings (after the initial filing) in a case through email. Notwithstanding the above, a patron seeking a civil protective order or civil stalking injunction be allowed to file their initial request via email due to the significant access and safety concerns implicated in these proceedings.

Constitutional Considerations

Rulemaking bodies should explore the constitutional concerns surrounding the use of in-person and virtual hearings, most importantly whether in-person and virtual hearings are constitutionally equivalent. For example, Rule 26(a)(1) of the Utah Rules of Juvenile Procedure provides that minors have a right “to appear in person and to defend in person or by counsel.” Rule 17.5 of the Utah Rules of Criminal Procedure identifies certain types of hearings that can be held via contemporaneous transmission, while prohibiting others, and allowing for waiver of the prohibition with mutual agreement of the parties. Our historical analysis of when parties were entitled to in-person hearings may not be current with recent technological advances and the availability of virtual resources. The GPWG recommends that the judiciary’s rulemaking bodies balance the increasing need for opportunities to improve access to justice, while simultaneously ensuring court rules and practices do not violate principles of due process.

Initial Rule Amendments to Consider

In addition to rule-making bodies providing guidance on the new “good cause” standard, there are other procedural and administrative rules that may benefit from amendment or clarification. The GPWG has formulated a list of the rules with the most perceptible need for attention, which is included under **Appendix C** of this report.

Stakeholder Input

The GPWG distributed a draft of this report to community stakeholders and government agencies, requesting their feedback.

Community Stakeholders

The most common feedback from community stakeholders was that options for virtual participation in court proceedings should continue and that court patrons should be able to request the opportunity to participate virtually even if the judicial officer has determined that the proceeding will be in person. Stakeholders explained that even though virtual hearings have some limitations and are not the best option in all circumstances, they have significantly expanded access to justice.

Multiple stakeholders expressed appreciation for virtual hearings while also noting a need for additional technical support for virtual hearing participants. Many participants will not have experience with Webex and may experience difficulties accessing a virtual hearing and navigating through Webex. Resources with detailed explanations about how to participate in a virtual hearing and employees or volunteers dedicated to assisting virtual hearing participants would help people overcome difficulties prior to and during their virtual hearing.

Two stakeholders noted that the health concerns regarding the pandemic are still very real and very serious for some people and asked for appropriate consideration of the circumstances of those people.

Stakeholders provided many additional recommendations, which are listed below.

- Coordinate with community organizations likely to provide access to technology and support efforts to strengthen these services.
- Provide dedicated staff to assist users experiencing technical problems with a virtual hearing.
- Establish consistent policies to determine whether hearings will be virtual or in person.
- Each court should have a single, consistent link used to access virtual hearings.
- For virtual calendars involving multiple cases, establish a consistent way to notify the court that a participant is prepared for their case to be called and a way to notify a participant that their case will be called next.
- Provide greater access to breakout rooms for conversations with clients and for negotiations among parties.
- Make reasonable accommodations for patrons with disabilities.
- Allow hearing participants to participate virtually upon a finding of good cause even if the court has determined the hearing will be in person.
- Provide better instructions accessing a virtual hearing and explaining the expectations for participants. This may be a short video or an information sheet.
- Provide links for all public virtual hearings in a central location on the courts' website.

- Establish consistent procedures for entering evidence in virtual hearings.
- Ask virtual hearing participants if another person is in the room in order to determine whether someone is trying to influence the participant.
- Develop procedures for patrons to participate in virtual hearings without sacrificing privacy.
- Expand the availability of court kiosks for pro se people to use for printing, scanning, and filing documents.
- In both virtual hearings and in-person hearings, allow appropriate time for participants to process questions and communicate with the judicial officer.
- Shift the approach of courts to make judicial officers seem approachable and encourage staff to help people navigate the complexities of court.
- Consider offering extended hours to accommodate people who work during the day.

Government Agencies

The Utah Department of Corrections (UDC) expressed hope that the courts would not change policies that would result in them needing to conduct more transports. UDC noted that increasing the number of transports would impact their capacity to handle other work. The Division of Juvenile Justice and Youth Services similarly expressed a hope that detention hearings could be held virtually. They noted that for youth in a community placement in their county, their case managers would plan to request in-person hearings when they felt it was necessary.

Future Questions

The judiciary will continue to learn about the utility of virtual hearings in coming months. Periodic review of these recommendations and policies based on these recommendations is important. The judiciary should gather and analyze data, including data from court patrons and stakeholders as well as data about virtual and in-person hearings, to see how virtual hearings are serving the public and advancing the mission of the judiciary.

GPWG Recommendation

The judiciary should gather and analyze data, including data from court patrons and stakeholders as well as data about virtual and in-person hearings, to see how virtual hearings are serving the public and advancing the mission of the judiciary.

There will certainly be additional questions that arise regarding the use of virtual hearings. The GPWG is willing to consider and make recommendations on any additional issues that would be helpful to the Judicial Council and Supreme Court.

Recommendations

- Continue to invest in IT staff necessary to support virtual and hybrid hearings and to provide training to employees and judicial officers.
 - Judicial discretion vs. patron preference
1. **Judicial discretion**
Judicial officers consider the factors discussed below in “Considerations for Judicial Officers” and other information relevant to the case, hearing, and parties and then determine whether a hearing will be in-person or virtual.
 2. **Court Patron Requests**
 - a. Where an in-person hearing is scheduled and a participant requests that they be allowed to participate virtually, the judicial officer must allow them to participate virtually if the participant shows good cause, which permission shall not be unreasonably withheld.
 - b. Where a virtual hearing is scheduled and a participant requests that they be allowed to participate in person, the judicial officer must allow them to participate in person if the participant shows good cause, which permission shall not be unreasonably withheld.
 3. **Good Cause**
A good cause standard should be established, as discussed below in “Amending Court Rules.”
 4. **Court Technology**
 - a. Courtroom technology must provide remote participants the same opportunity as in-person attendees to hear, view, and participate in the court proceeding.
 - b. Each district should develop a digital evidence plan to standardize how digital evidence is managed within the district.
 5. **Remote Attendee Obligations**
 - a. A person who attends a court proceeding virtually must use a device and an internet connection that will contemporaneously transmit video and audio with sufficient quality to ensure a clear, verbatim record of the proceeding. If that technology is unavailable, the person must attend the court proceeding in person. The court may choose to require only audio transmission.
 - b. Remote attendees must observe the same courtroom decorum as those attending in person, including appropriate courtroom attire, behavior, and language.
 - c. Remote attendees must appear from a location that does not disrupt the court proceeding and allows the attendee to participate without distractions. Attendees must never appear in a court proceeding while operating a vehicle.

- Juvenile court judges should consider the following factors when deciding whether a hearing will be in person or virtually.
 - Individual needs of youth and parents:
 - access to technology, including availability of Webex kiosks or other similar accommodations to facilitate participation in a virtual hearing;
 - transportation and travel challenges, including distance of residence from the courthouse (out of county, etc);
 - accommodation for youth enrolled in school; and
 - accommodation for working parents.
 - Case Circumstances:
 - feasibility of a virtual hearing or transport for an incarcerated parent;
 - whether a case is high-profile;
 - whether a youth or parent would benefit from face-to-face interaction with the judge;
 - youth or parent lack of engagement;
 - youth is in a remote out of home placement and transport is not feasible; and
 - youth or parent display a lack of understanding of court processes or orders.
 - Hearing Circumstances:
 - whether the hearing is a procedural or substantive type hearing;
 - whether evidence is being presented; and
 - whether witness testimony is required.
 - Judges should additionally consider comfort level, preferences, and health accommodations of parties and teams.
- Justice court judges and district court judges should consider the following factors when deciding whether a hearing will be in person or virtually.
 - Does an existing statute, rule, or principle of law require an in-person hearing? Can the mandatory nature of that requirement be waived by the parties (or by a single party)?
 - Do all parties have sufficient access to technology for virtual hearings?
 - What is the substantive or procedural importance of the hearing?
 - Which type of hearing best promotes access to justice for the parties?
 - Are the parties more comfortable with a virtual hearing (e.g., high-conflict domestic cases, protective order hearings, and civil stalking injunction hearings)?
 - Does the type of hearing allow the parties to have access to counsel of their choice?
 - Would the parties or their counsel be required to travel long distances for an in-person hearing?
 - Is there a significant cost to a party for an in-person hearing (e.g., money, time, lost work, child care, cost of transportation from jail for civil proceeding, etc.)?

- Do the parties have a stated preference for a certain type of hearing? If so, how and when do parties state their hearing-type preference?
- Are the judge and court staff able to manage a virtual or hybrid courtroom effectively?
- Does the hearing make efficient use of judicial resources, facilities, and court personnel?
- Will a party be prejudiced from requiring an in-person, virtual, or hybrid hearing?
- Will the type of hearing unreasonably delay the progress of the case, increase expense, or complicate resolution of any issue?
- Will the type of hearing unreasonably limit the court's ability to assess credibility, voluntariness, or comprehension?
- Is there a fairness concern because one party has easier access to the courthouse, or greater facility with technology, and is seeking a strategic advantage?
- Does the type of hearing allow for greater access to effective interpretation services?
- Is there enough time to give notice for people to make appropriate arrangements—especially where there is a change from one hearing type to another?
- Does the type of hearing—particularly virtual and hybrid hearings—allow parties to share documents?
- In virtual and hybrid hearings, will the participants have prior or simultaneous access to documents, photos, etc., that are submitted to the courtroom?
- Appellate court judges should consider the following factors when deciding whether a hearing will be in person or virtually.
 - What are the locations of parties and the costs of travel? Does requiring one party to travel a significantly greater distance to the courthouse create fairness issues?
 - What are the unintended impacts of having appellate courts that operate from only one courthouse in the state? Does this geographic reality impact decisions to file appeals?
 - Would in-person or virtual oral argument increase the diversity of the appellate bar? Would it increase the diversity of the appellate bench?
 - Which method(s) do the parties prefer for making their oral arguments?
 - Which method does the appellate bench prefer for holding oral argument? Because oral argument is designed to be an opportunity for judicial officers to ask questions presented in briefing, does this preference hold more weight than the preference of the parties?
 - Does the type of case matter in making the decision on remote vs. in-person?
- Court-wide best practices
 - Each court location should update judicial officers, court staff, patrons, attorneys, and community partners (e.g., the prison and jails) on relevant Webex updates

and process changes. This may include a page on the court website for updates and regular revisions to posted Webex guides.

- Each court calendar should clearly indicate if a hearing is scheduled to be held in person or through a virtual or hybrid hearing. If the calendar setting is for a virtual or hybrid hearing, the Webex link for the hearing should be included on the calendar for the parties, public, and media to access, as appropriate (i.e., some hearings — such as adoptions — are not open to the general public or media and would therefore not have a publicly-accessible Webex link).
 - A party who shows up at the courthouse for a virtual hearing — whether due to calendaring confusion or inability to access a virtual hearing on their own — should be provided access to participate in the virtual hearing. To facilitate this access, kiosks should be available at every courthouse for patrons to participate in virtual hearings as needed.
 - To address current challenges with the courts' network bandwidth, it is recommended that court employees working at a court location avoid using the wireless network and instead connect to the wired network whenever and wherever possible.
 - Court employees working at the same court location who attend a virtual meeting should gather as a group in a single location to attend the meeting from a single device and network connection as this reduces bandwidth pressure on the courts' network.
 - The public wireless networks in each court location share a statewide connection, resulting in limited capacity to support parties, attorneys, and members of the public who may expect to use the courts' public wireless network to attend remote hearings. These court participants should connect to virtual hearings using networks other than the courts' public wireless networks at the courthouse.
- Best practices for judicial officers and court staff

JUDICIAL OFFICERS & COURT STAFF		
1	Notices: <i>Contents</i>	<p>All notices for virtual hearings should include at a minimum the following information (taking into consideration Rule 43 of the Utah Rules of Civil Procedure):</p> <ul style="list-style-type: none"> • the date and time of the hearing; • the type of hearing — virtual, hybrid, or in-person; • the purpose of the hearing; • how to join the hearing, including: <ul style="list-style-type: none"> – the Webex link (or how to access that link); – if permitted, how to call-in for the hearing; – whether participant video must be enabled; – how to access virtual hearing kiosks at a court location; • what to expect at a virtual hearing;

JUDICIAL OFFICERS & COURT STAFF		
		<ul style="list-style-type: none"> • how to file, serve, and present evidence; • what patrons should tell their witnesses; • contact information for technical assistance (see <i>Recommendation #5</i>); • the process for submitting and presenting evidence (see <i>Recommendation #8</i>); and • how to request interpretation or accommodation (see <i>Recommendation #12</i>).
2	Notices: <i>Plain Language</i>	Notices should be easy to understand (i.e., in plain language, avoiding abbreviations or having standard abbreviations; etc.).
3	Notices: <i>Hearing Changes</i>	If a hearing is changed from in person to virtual or vice versa after notice was sent, a new timely notice should be provided to all participants.
4	Notices: <i>Self-Represented Parties</i>	If a self-represented party has provided an email address, notices should be sent by email. When possible, MyCase should be the preferred method for such communication.
5	Technical Assistance for Virtual Hearing Participants	Each court location should have a technical assistance phone number that is included on every hearing notice. Ideally this number should be specific to each court location, but at a minimum should connect the participant to a qualified individual who can: <ul style="list-style-type: none"> a) assist the participant to resolve technical issues; AND b) communicate immediately with the judicial officer's judicial assistant that the participant is attempting to connect to the virtual hearing but is experiencing technical issues.
6	Calendar Capacity	Virtual hearings may take longer and should be scheduled appropriately.
7	Webex Greeting	Participants should be greeted by a screen in Webex to confirm for participants and the public that they are in the right virtual location. For example, the screen could display the name of the judge, the time hearings are scheduled to begin, and what to do while waiting.
8	Instructions: <i>Evidence</i>	Judicial officers and judicial assistants should provide participants with clear instructions on how to submit and present evidence to the court during a virtual hearing.

JUDICIAL OFFICERS & COURT STAFF		
9	Instructions: <i>Expectations</i>	If possible, any specific expectations of the parties should be clearly communicated to the parties in advance (e.g., if a camera is required for the party's participation in the hearing, if parties are expected to have spoken/negotiated before the hearing or if breakout rooms will be available for that purpose, etc.). These expectations could be provided in a flier, district-level standing order, or the Judicial Council may want to create a rule.
10	Instructions: <i>Hearing Processes</i>	The judicial officer or judicial assistant should provide hearing-specific instruction on virtual hearing processes (e.g., how a party/attorney should inform the court when their case is ready to be called). "How to" materials could be created for attorneys new to virtual hearings (how to find the calendar/hearing information, tips on how to communicate with clients if they are not in the same location during the hearing, how to prepare clients, how interpretation works during hearings, communicating with opposing side in advance of the hearing, use of breakout rooms, how to present evidence, etc.)
11	Instructions: <i>Use of Webex</i>	The courts should provide clear instructions explaining how to use Webex. "How to" materials could be created for all Webex users. Materials for attorneys new to virtual hearings might include how to find the calendar/hearing information, tips on how to communicate with clients if they are not in the same location during the hearing, how to prepare clients, how interpretation works during hearings, communicating with opposing side in advance of the hearing, use of breakout rooms, how to present evidence, etc.
12	Interpretation & Accommodation	When an interpreter is needed, judicial assistants should make arrangements for simultaneous interpretation if possible (or direct the party or attorney on how to arrange for simultaneous interpretation). The process for requesting other accommodations should be clearly communicated to participants.
13	Ongoing Training	Judicial officers and judicial assistants should receive ongoing training on Webex and other necessary virtual hearing technology.
14	Experience Sharing	The courts should provide regular opportunities for judicial officers, court staff, patrons, and stakeholders to share their feedback on the use of the virtual hearings.

- Best practices for court patrons

COURT PATRONS		
1	Decorum Expectations	Participants SHOULD : h) remember that a virtual courtroom is subject to the same

COURT PATRONS		
		<p>standards of behavior and decorum as in-person court;</p> <ul style="list-style-type: none"> i) dress appropriately for a court appearance; j) be focused on the proceedings by pre-arranging care for other obligations that may need attention during the hearing (i.e., children, pets, etc.); and k) if late for a hearing, remain in the Webex proceeding until the judicial officer has finished calling through the other scheduled hearings before alerting the judicial officer. <p>Participants SHOULD NOT:</p> <ul style="list-style-type: none"> l) speak over another party or an interpreter; m) interrupt when joining a virtual hearing that has already started (remain muted until their case is called); and n) eat, drink, smoke, or drive during the hearing.
2	Technology Expectations	<p>Participants SHOULD:</p> <ul style="list-style-type: none"> g) Location – plan on joining the virtual hearing from a suitable location that is quiet, private, and allows the participant to focus; h) Camera – have video enabled and be visible to the court when participating in a proceeding, choosing a camera angle that avoids background distractions; i) Lighting – avoid camera angles that position a window or other bright light behind the participant (this often results in poor video quality and obscures the participant's face); j) Audio – be aware of and try to minimize background noises; k) Calling in on a non-smartphone – avoid joining a virtual hearing via a non-smartphone, as it will limit Webex functionality (e.g., the participant won't be able to be moved into a separate virtual room to talk with an attorney); and l) Bandwidth – use a network with sufficient bandwidth for a stable connection to the virtual hearing OR use a computer kiosk at the courthouse to join a virtual proceeding.

- Best practices for attorneys

ATTORNEYS		
1	Expectations	<p>Expectations for attorneys should be outlined and disseminated. For example, attorneys SHOULD:</p> <ul style="list-style-type: none"> g) Title & Name – ensure their Webex name displays their title followed by their full name (i.e., Defense Attorney Atticus Finch); h) Camera – have video enabled and be visible to the court when participating in a proceeding, choosing a camera angle that avoids background distractions; i) Audio – be aware of and try to minimize background noises, and

ATTORNEYS		
		<p>use a quality microphone to help ensure an accurate record;</p> <p>j) Attire – dress appropriately for a court appearance;</p> <p>k) Simultaneous hearings – log into multiple simultaneous hearings only if the attorney can effectively manage participation in each hearing, ensuring appropriate, timely, and responsive communication with each court; and</p> <p>l) NEVER drive during an appearance.</p>

- Best practices for jails and prisons

PRISON & JAILS		
1	Stakeholder Meetings	<p>Stakeholder meetings should be held to discuss and establish best practices between the courts and the prison / jails, including:</p> <p>d) communication processes to notify the correctional facility if a hearing will be in person or virtual so appropriate transportation or virtual appearance can be arranged;</p> <p>e) the need for each correctional facility to provide at least two Webex-equipped rooms per court calendar to facilitate attorney / client communication in a breakout room, while the court moves forward with other cases in the remaining room.</p> <p>f) the need for each correctional facility to have a dedicated phone that an interpreter can use to provide simultaneous interpretation during the hearing to an inmate with limited english proficiency.</p>

- The Supreme Court should establish a “good cause” standard that hearing participants must demonstrate in requesting to appear opposite the decision of the judicial officer. The Supreme Court should charge its various advisory committees with defining the “good cause” standard through rule. The Supreme Court should establish an appeal process when a hearing participant believes a judicial officer is not appropriately applying the “good cause” standard as defined in the relevant procedural rules. Because the “good cause” standard may vary between procedural rule chapters, it will likely be necessary for each procedural rule chapter to define an appeal process.
- All initial filings by self-represented litigants should be made in person or via US mail. The Judicial Council should amend its rules to specifically authorize self-represented litigants to make subsequent filings (after the initial filing) in a case through email. Notwithstanding the above, a patron seeking a civil protective order or civil stalking injunction be allowed to file their initial request via email due to the significant access and safety concerns implicated in these proceedings.
- The judiciary should gather and analyze data, including data from court patrons and stakeholders as well as data about virtual and in-person hearings, to see how virtual hearings are serving the public and advancing the mission of the judiciary.

APPENDIX A

Green Phase Working Group Members

- Hon. Ryan Harris, *Utah Court of Appeals*
- Hon. Renee Jimenez, *Third District Juvenile Court*
- Hon. Michael Leavitt, *Fifth District Juvenile Court*
- Hon. Richard Mrazik, *Third District Court*
- Hon. Don Torgerson, *Seventh District Court*
- Hon. Danalee Welch-O'Donnal, *Grand County Justice Court*
- Brody Arishita, *Chief Information Officer*
- Linda Ekker, *Clerk of Court – Sixth District*
- Becky Faatau, *Judicial Assistant – Third District*
- Brett Folkman, *Trial Court Executive – First District*
- Chris Morgan, *Trial Court Executive – Sixth District*
- Joyce Pace, *Trial Court Executive – Fifth District*
- Russell Pearson, *Trial Court Executive – Eighth District*
- Nathanael Player, *Self-Help Center Director*
- Glen Proctor, *Trial Court Executive – Second District*
- Calli Stephensen, *Judicial Assistant – Fourth District*
- Shannon Treseder, *Clerk of Court – Second District*
- Pleasy Wayas, *Self-Help Center Attorney*

Green Phase Working Group Staff

- Shane Bahr, *District Court Administrator*
- Michael Drechsel, *Assistant State Court Administrator*
- Ron Gordon, *State Court Administrator*
- Meredith Mannebach, *Assistant District Court Administrator*
- Daniel Meza Rincon, *Assistant Juvenile Court Administrator*
- Jim Peters, *Justice Court Administrator*
- Neira Siaperas, *Deputy Court Administrator*
- Nick Stiles, *Appellate Court Administrator*
- Sonia Sweeney, *Juvenile Court Administrator*

APPENDIX B

Survey Report

*Utah Survey of Court Users:
The Impact of Remote Hearings
on Access to Justice, June 2022*



UTAH SURVEY OF COURT USERS: THE IMPACT OF REMOTE HEARINGS ON ACCESS TO JUSTICE

June 2022



PREPARED BY

Pamela Beatse, JD

Access to Justice Director | Utah State Bar

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Appendix B - Utah Survey of Court Users

Access to Justice Commission: Court User Survey Workgroup

Justice Christine Durham, Amy Sorenson, Pamela Beatse, Nancy Sylvester, Keenan Carroll, Judge Susan Eisenman, Judge Clem Landau, David McNeill, Judge Richard Mrazik, Kim Paulding, Nathanael Player, Keri Sargent.

Acknowledgment

Members of the Court User Survey Workgroup of the Access to Justice Commission would like to thank everyone who responded to the survey. They would like to thank the Third District judicial teams and judges who are participating in this Court User Survey project including District Court Judge Richard Mrazik, Justice Court Judge Clemens Landau, and Juvenile Court Judge Susan Eisenman. They would also like to thank the National Center for State Courts, in particular Danielle Hirsch, Alisa Kim, and Zachary Zarnow, and the Utah Courts team, in particular Heidi Anderson, Todd Eaton, and Jace Kinder, who gave support and technical assistance building and distributing the survey.

KEY RESULTS



Benefits of Remote Hearings

1. Increased Job Stability
2. Economic Savings
3. Improved Access to Court
4. Personal Safety

**Professionally conducted.
Clear audio and video. Saves a
lot of time, money and travel.**



77% of participants are from
the **Third Judicial District**.

Treated with Courtesy and Respect
Court patrons and practitioners think
the court treats them professionally.



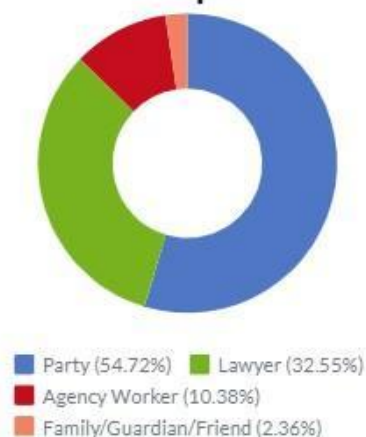
Done in Reasonable Amount of Time
Participants believe their activities are
completed in timely manner.



Quality Sound and Video
Respondents say Webex sound and
video are ample to conduct activities.



Categories of Survey Participants



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Summary

When Governor Gary Herbert declared a state of emergency to enable the State of Utah to respond to novel coronavirus disease 2019 (COVID-19) on March 6, 2020, the landscape of justice changed rapidly. Since March 13, 2020, the Utah Supreme Court and the Utah Judicial Council have issued numerous Administrative Orders governing court operations during the pandemic to protect the public from the spread of disease. During this time, and out of necessity, the Utah State Courts relied on the use of Webex to conduct remote hearings and other court business statewide. Along the way, tools and processes were initiated to allow for fully remote hearings. Some are now working on returning to in-person hearings.

In the fall of 2021, the Access to Justice Commission (“ATJ Commission”) began studying remote hearings in Utah by conducting a survey of Utah court patrons and practitioners. The ATJ Commission initially partnered with the National Center for State Courts as part of a national review. The Commission then narrowed its focus to a Utah-specific survey. The data from this survey is the basis for this report. The focus of this study was determining whether and how remote hearings resulted in access to equal justice for people in Utah.

Based on the data collected, Utah court patrons and practitioners strongly prefer remote hearings, at least for some types of court hearings and activities. Court operations over Webex are done with courtesy and in a timely manner. While there are occasional issues, Webex sound and video are highly rated. Most importantly, remote hearings have increased access to equal justice for many people. Survey respondents list benefits that include being better able to provide representation in rural Utah, not having to miss work, and not having to pay for childcare and travel as strong benefits. Based on these due process and convenience factors, Utah courts should work to include remote access moving forward.

Method

A sample of data from Utah court patrons and practitioners was collected through two different online surveys. The first was prepared by the National Center for State Courts as a Utah-specific questionnaire using Qualtrics (“NCSC Survey”).⁶ Data through the NCSC survey currently includes 101 responses, collected from September 24, 2021, through June 5, 2022, with continuing responses anticipated.

The second was developed by the Access to Justice Commission Court User Survey Workgroup using SurveyMonkey (“ATJ Survey”).⁷ Data from the ATJ survey currently includes 119 responses, collected from March 14 through June 5, 2022, with responses continuing to

⁶ National Center for State Courts Qualtrics Court User Survey *available at* https://ncsc2.iad1.qualtrics.com/jfe/form/SV_bIYBug4VwsbQhnM.

⁷ Access to Justice Commission SurveyMonkey Court User Survey *available at* <https://utahcourts.surveymonkey.com/r/CTT5WB3>.

accumulate. At present there are 220 individual records. Seven responses were excluded due to incomplete information, for a total sample of 213.

Limitations

There are limitations to the data collected through this survey of Utah court patrons and practitioners. Survey responses were primarily collected through a pilot program in the Third Judicial District. The combined responses are sufficient to draw several conclusions, but the data is less certain for some types of court use. For example, certain districts are under- or unrepresented, in part as a natural consequence of state population distribution and in part due to the constraints of the pilot study. Surveys were mostly collected by sending a link by email, reducing responses from call-in users. In addition, the survey did not collect any responses from jurors or witnesses, so it includes limited information on the efficacy of remote hearings for jury trials or complex litigation. To keep the survey small, important questions were not asked and they merit further study such as the impact of remote hearings on privacy or on victims of abuse.

Survey Participants

Surveys were sent or given to parties (plaintiffs and defendants), lawyers, agency workers, family members, and friends after they appeared in a Utah court. Agency workers include people from the Department of Child and Family Services, the Division of Juvenile Justice Services, and other court advocates. The sample population is based on respondents' ability and willingness to participate, not a scientific or fully representative sample. One district court, one justice court, and one juvenile court judicial team sent surveys to their court patrons.⁸ Starting in April, the Access to Justice Office of the Utah State Bar sent surveys to participants in the Third District immediate occupancy and debt collection calendars. The ATJ Office also sent surveys to volunteer attorneys in their programs. Links to the online surveys were provided through a variety of channels, including by email, text message, insertion in the Webex chat, and QR code.



Survey Content

The NCSC survey included 24 multipart questions and took approximately 5 minutes to complete. The ATJ survey was reduced to 19 questions that were included in the NCSC survey. The typical time spent completing this survey was 2 minutes and 2 seconds.



Both surveys included qualitative and quantitative questions about demographics, accessing remote proceedings, type and location of court use, their preferences, and other aspects of their experiences. The objective was to understand how court patrons and practitioners experienced virtual services in Utah courts. Data includes matching responses combined from surveys.

Survey Data and What It Tells Us

The 213 survey respondents combined from the NCSC and ATJ Surveys represent a population of parties (116), lawyers (69), agency workers (22), and family members and friends (5) who are diverse in their age, method of accessing the remote hearing, location, and type of court use. They represent actual court patrons and practitioners who appeared in a Utah district, justice, or juvenile court from fall 2021 to spring 2022. The NCSC Survey was slanted towards plaintiffs and defendants who comprised 90% of NCSC Survey respondents. The ATJ Survey respondents included more nonparties: 55% lawyers and 19% agency workers. Because court uses include juvenile matters, respondents included minors.

Respondents provided feedback in these key areas:

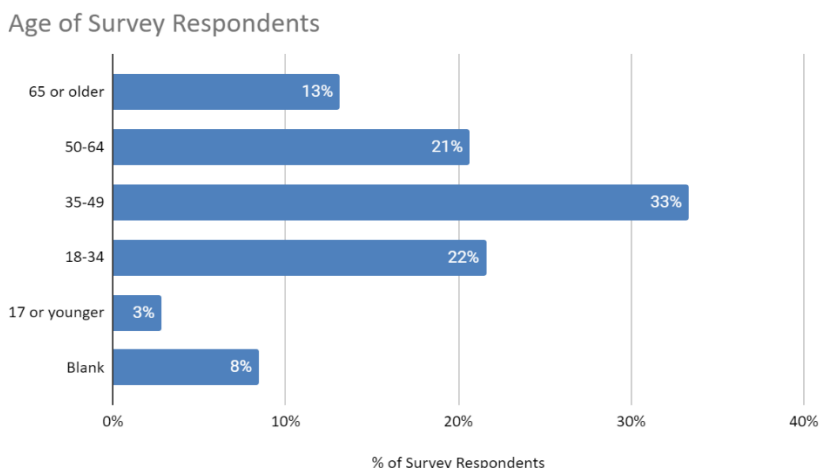
1. Stating a preference to participate in-person or remotely.
2. Evaluating whether the court team treated everyone with courtesy and respect.
3. Assessing if they got their court business done in a reasonable amount of time.
4. Rating the quality of Webex sound and video.

Age of Respondents

There were 199 respondents who self-identified their age by selecting from a range of ages. Most people were between 18 years and 49 years old (55%):

- 47 respondents aged 18 - 34 years (22%)
- 72 respondents aged 35 - 49 years (33%)

Minor children aged 17 or younger were 3% of the sample. The remainder included 21% respondents aged 50 - 64, 13% aged 65 or older and the remaining 8% did not respond to this field.



Accessing Court

Hearings or Other Activities

The combined survey provided these options for how respondents accessed court: face-to-face at the courthouse, remotely using a court kiosk, remotely using a personal computer or laptop, remotely using a cell phone, iPad, or tablet, remotely from jail, prison, or detention center, remotely from a hospital, and other. Most respondents appeared remotely either using a personal

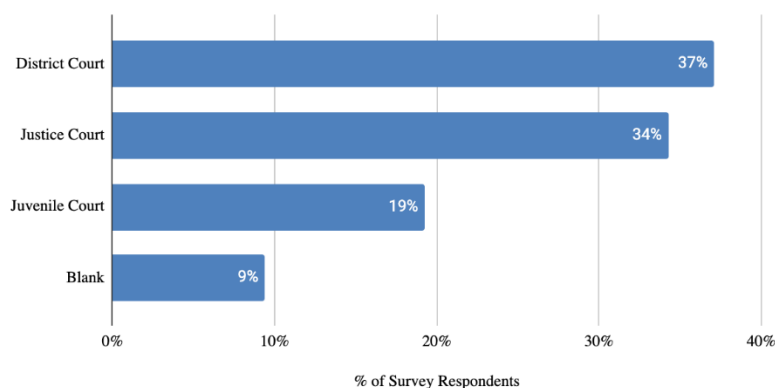
Appendix B - Utah Survey of Court Users

computer or laptop (109) or using a cell phone, iPad, or tablet (71). There were some respondents who attended in-person (9) or used a court kiosk (2).

Locations Where Respondents Attended Court

Respondents appeared in district court (37%), justice court for small claims or criminal cases (34%), and juvenile court (19%).

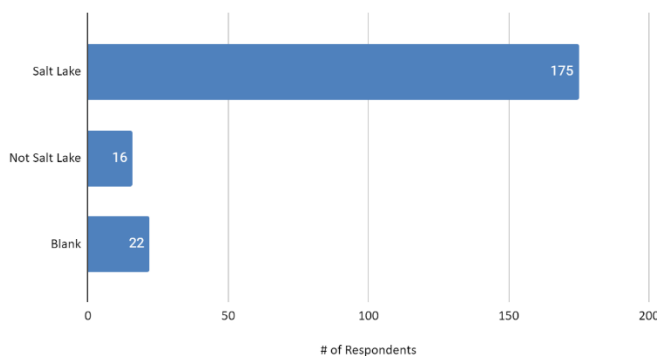
Survey Respondents Participated in District, Justice, and Juvenile Courts



The ATJ Survey asked specifically about judicial district, while the NCSC did not. The ATJ Survey included responses from the 1st, 2nd, 3rd, 4th, 5th, and 7th Districts; however, most were from the Third District (77%).

All respondents were able to self-identify by county, but most were from Salt Lake County (176 responses in Salt Lake County, 22 blank for this field, and 16 responses from outside of Salt Lake County).

Location of Survey Respondents (By County)



Types of Court Use

Patrons and practitioners used the court for a wide variety of civil and criminal legal matters, including conducting administrative business such as making a payment.

This is the breakdown:

Types of Court Use

Total

Traffic/Ticket

53

Criminal/probation

35

Civil matter	26
DCFS/Child welfare case	23
Landlord/Tenant/Eviction	12
Juvenile delinquency	11
Divorce/Custody/Support	7
Other: firearm at SLC international security check, infraction possession of marijuana, DUI, adoption, DASLC operations	5
Specialty court (Drug, Mental health, Veterans)	4
Other: Domestic Violence/Sexual Abuse	4
Small claims	3
Protective Order or Civil Stalking Injunction	3
Multi-issue hearing (criminal + civil)	2
Guardianship/Conservatorship	1
Estate/Trust	1
To make a payment	1

Open-Ended Responses

The survey asked this open-ended response question, “Please provide additional comments or suggestions about your experience today,” to allow respondents the opportunity to further comment on their experiences and give additional insights. Most people gave positive comments about their experiences but there were a few negative reactions. Overall, these open-ended responses tell a story of why there is such a strong preference for remote hearings, suggestions for continuing remotely, some of the problems, and why remote hearings remove access to justice obstacles for many.

Here are some examples of participant open responses received:

Ease: “Much easier to do virtually than find time, transportation, parking.”

Appendix B - Utah Survey of Court Users

Less Intimidating: “I felt the judge was more relaxed with the virtual court. I was much more comfortable at my work rather than standing in front of him. I felt it much easier to speak to him though I could see him and he could see me it was much calmer.”

Increased Representation: “I would not have been able to accept and represent in this case if it were not conducted remotely as it was in St. George and I am in Salt Lake.”

Better Access: “Love WebEx. Very efficient and allows for the best access to justice.”

Economic Savings: “I appreciate the flexibility and savings in gas!”

New Standard: “I think it’s nice to do the small cases remotely. The big cases could be used for the court such as criminal prosecutions since they require a lot of time Not everyone has the gas money nor the time to attend a hearing due to the demands from their job. It should be the new standard going forward after the pandemic so you guys can handle case loads faster.”

Too Lax: “The hearing was a couple of weeks ago, and I thought the time permitted for argument was excessive and the judge should have done more to require opposing counsel to conduct himself with professionalism and civility.”

No Covid Restrictions: “Court hearings should be in person, perhaps other than simple scheduling matters. No Covid restrictions should be imposed on any participants. Mask wearing should be discouraged, particularly for parties, attorneys, and judges.”

Tech Issues: “Horrible. I was never able to join the court proceedings because I never received the email with the link. I received an email a few days before, saying that an additional email would be sent to me, but I never received that email, and thus, could not join the court proceedings. This is not my fault at all.”

Need Clear Instruction: “... It may benefit a defendant to have a knowledge of each step involved in a case provided by the prosecution, including any possible deviations. Step by step knowledge of procedures would have greatly reduced the intimidation. (A ‘timeline’, printed chronological order of appointments and the purpose of each would save court staff countless hours answering the same questions that inevitably are asked and give confidence to all parties.)”

Inefficiency of In-person: “Remote hearings should be the default, except where testimony or evidence need be presented. In-person attendance is wasteful and inefficient.”

Job Stability: “Webex allows my clients to attend more hearings and still keep their jobs. It is vastly more efficient.”

Time & Money Savings: “Professionally conducted. Clear audio and video. Saves a lot of time and travel.”

Key Findings

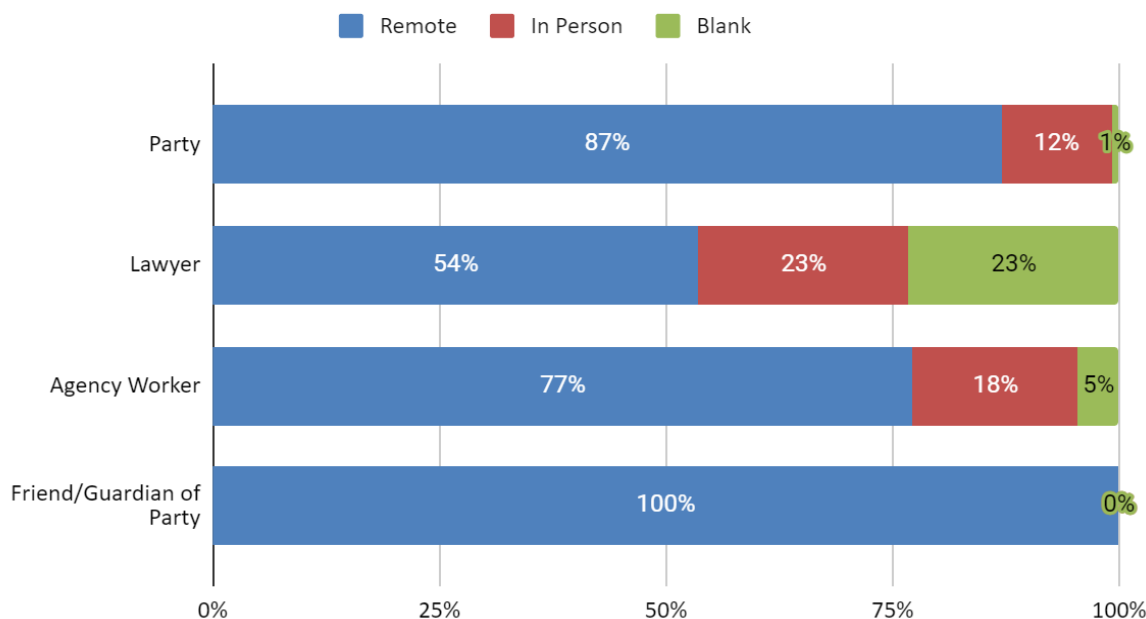
This court user survey reveals important benefits to holding remote hearings. Remote hearings have made court more accessible, whether the participant was young or old, in the metro area or more rural, in small claims or district court. Participants believe remote hearings are usually handled professionally and they feel respected. They recognize Webex provides adequate sound and video. They appreciate the convenience as well as the savings in time and money.



75% of all Utah participants prefer remote hearings regardless of how they accessed court, their age, or location.

The most conclusive finding from the Court User Survey is that every type of participant strongly prefers remote access. Seventy-five percent of all survey respondents prefer remote hearings and only sixteen percent selected in-person (the other nine percent left this field blank). Comparing this preference by type of participant reveals interesting information. Based on this

All Types of Participants Prefer Remote Access

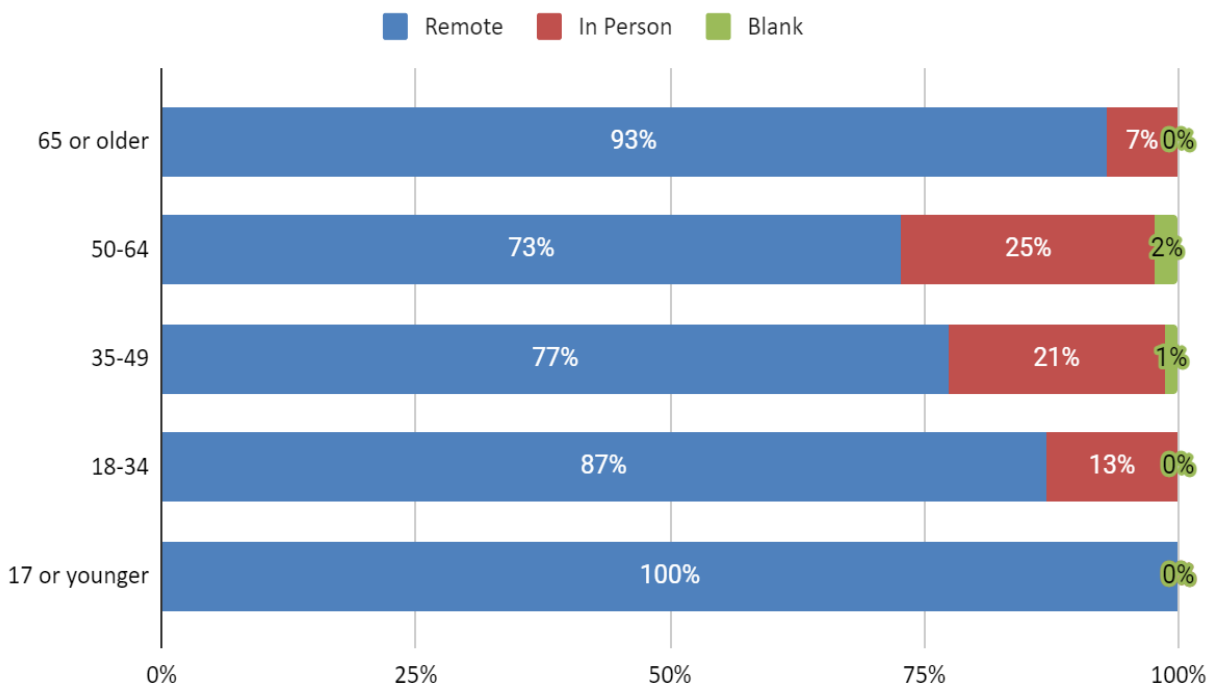


breakdown, it becomes clear that lawyers are participants who most want court to be in-person. Yet even this category shows that the majority of lawyers prefer remote access. Moreover, the people with the most to gain or lose – plaintiffs and petitioners, defendants and respondents, and their family, guardians, or friends – overwhelmingly prefer remote court hearings. This same trend can be found when considering preference of access by age.

Appendix B - Utah Survey of Court Users

The robust preference for remote access is found in every age range. As one might expect, younger users would rather appear in court remotely. In fact, 100% of participants under the age of 17 selected this option. More surprisingly, 93% of older adults 65 years or over also expressed a clear preference for attending virtually. Perhaps this is due to mobility, transportation, or other factors, but it dispels the stereotype of older people struggling with technology. Participants aged 50-64 were the most likely to select the in-person option, and still 73% of this range preferred remote hearings. Ultimately, no matter what age the participant was, they prefer to access court remotely by either computer, laptop, or phone.

People of All Ages Prefer Remote Access



Even the type of court did not impact this preference for remote access by court patrons and practitioners. In fact, 78% of district court, 84% of justice court, and 85% of juvenile court participants all expressed preference for remote hearings. This data displays the importance of asking and acting on information instead of doing what might seem easier or more intuitive.



Utah survey participants are **treated with courtesy and respect** by the court.

There is a clear showing that survey participants feel they are treated with courtesy and respect by the judicial team and the judge. In the survey, respondents were asked to rate this by strongly agreeing, agreeing, being neutral, disagreeing, or strongly disagreeing. Out of 213 responses, 84% agreed with this statement with 70% “strongly agreeing.”

Appendix B - Utah Survey of Court Users

3.

Utah survey participants get **court business done in a reasonable amount of time** whether they participate remotely or in-person.

Survey participants were asked if they were able to get their court business done in a reasonable amount of time by strongly agreeing, agreeing, being neutral, disagreeing, or strongly disagreeing. Out of 213 responses, 76% agreed with this statement with 58% “strongly agreeing.” While this is somewhat lower than their courtesy and respect rating, it is still a very positive response.

4.

The **quality of Webex sound and video are suitable** for conducting the court business of Utah survey participants.

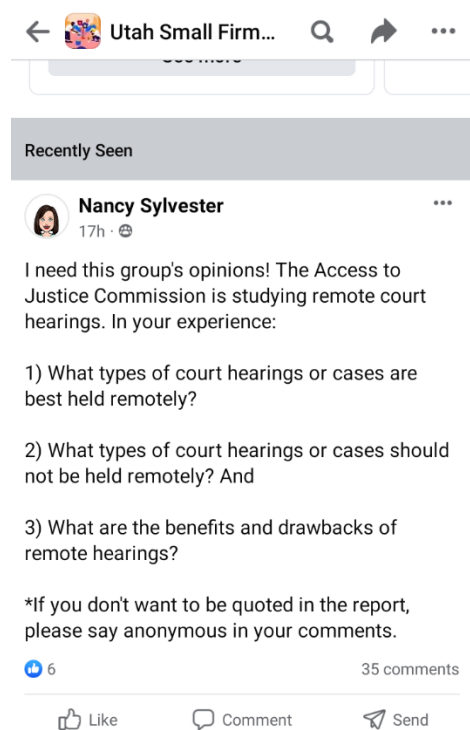
The Webex platform provides adequate sound and video quality, which allows survey respondents to participate in remote hearings. The NCSC and ATJ Surveys asked this question differently, so responses cannot be combined.⁹ However, the results show participants generally had a very positive view of Webex sound and video quality. For example, 72% of NCSC Survey respondents said they experienced no issues with being able to hear or be heard. Sound quality was rated even higher by ATJ Survey respondents: only 2 people said the sound quality was “Very Bad” and nobody selected “Bad.” This means that less than two percent negatively rated Webex sound quality. Moreover, 81.3% of NCSC Survey respondents said they experienced no issues with being able to see or be seen. Again, video was rated even higher by ATJ Survey respondents: less than one percent gave a negative rating; only 1 respondent said the quality was “Very Bad” and none selected “Bad.” This data shows most participants were satisfied that they could adequately hear and/or see during their remote hearing.

Snapshot: Dialogue from Lawyers in the Field

The data from the combined surveys provides useful information, yet it does not allow for conversation. The Court User Survey Workgroup recognized this and wanted to provide a channel for lawyers to discuss their personal experiences with remote court hearings. To collect this more qualitative information, they posted a query to the Utah Small Firm Attorney Network (USFAN), which is a Facebook group with over 900 Utah lawyers. USFAN actively discussed the merits and drawbacks of remote hearings. They also gave several suggestions on which types of hearings or cases were best suited for remote court. Other group members could respond and

⁹ The NCSC Survey asked, “Were there any issues with the sound or audio that made it difficult to hear or be heard?” and “Were there any issues with the video that made it difficult to see or be seen?” The possible responses to both were “All of the time,” “Most of the time,” “Some of the time,” or “None of the time.” The ATJ Survey asked, “If you ATTENDED BY WEBEX, rate the quality of the SOUND” and “If you ATTENDED BY WEBEX, rate the quality of the VIDEO.” The possible responses to both ATJ questions were “Very bad,” “Bad,” “Neutral,” “Good,” “Very Good,” and “Not Applicable.”

react to each comment.¹⁰ Some interesting themes, considerations, and suggestions are represented in their dialogue.



The group strongly supported the continuation of remote court for most hearings. As to which are best done remotely, many agreed evidentiary hearings, especially those involving witness testimony or complex, voluminous documents should be done in-person whenever possible. For instance, Scott Wiser received 15 “likes” for this comment, “I think Webex should be the default for everything short of trials and evidentiary hearings, and even then Webex appearances should be liberally granted for good cause” Some advocated for remote hearings being the standard even when they include live testimony. Melissa Bean explained, “I’ve been pleased with almost everything by remote access – even live testimony ... I honestly can’t think of many cases that would necessitate in-person hearings.” Yet others noted technology issues can sometimes require reconstructing the record to make sure it is clear. Many suggested a hybrid approach where the lawyer and/or the parties could choose.

Group members acknowledged there can be drawbacks to remote hearings. Common weaknesses discussed were the lack of spontaneous negotiations and problem-solving or the occasional technical glitch. There was also some back-and-forth debate on the ability of the judge to make assessments of the truthfulness and character of witnesses. Marco Brown said he believed that the judge really needs to see a witness live and in-person. There were counterexamples, e.g., “I find that having the four parties on the screen actually allows the judge to really ‘see’ a party’s tells¹¹ much easier than in court.”

A significant part of the Group’s dialogue centered on issues involving access to equal justice and fairness. Many people highlighted the benefits of remote hearings:

1. Remote hearings allow *greater access to lawyers*, especially in rural areas. Justin Caplin shared, “An attorney can take hearings in Kanab and Cedar and Beaver, Panguitch, and even more remote cities and counties without having to drive 1 to 3 hours each way.”
2. All participants receive a *cost savings in transportation and childcare*.
3. Clients have *lower legal costs*. Christopher M. Guymon explained, “Instead of charging my client for 1+ hours per hearing, I often only need to charge .2 or .3 hours, so often I

¹⁰ Some patterns and key ideas from the USFAN group are presented here, and the full Facebook dialogue, with replies and reactions, is attached as Exhibit A.

¹¹ Webster’s Dictionary defines a “tell” as an inadvertent behavior or mannerism that betrays a poker player’s true thoughts, intentions, or emotions. In this context, the commentor is likening a party’s revealing gestures, expressions, etc., to a poker player’s tell.

would say remote hearings save my clients a significant amount of money.” Jill Coil added, “It’s also allowed my attorneys to take in more clients. Now with us going back to court case load must go down which means we can’t serve as many.”

4. Remote hearings *help stabilize jobs for clients who do not have to miss work*. This is true because “A party can participate in a remote hearing from home or from the office without having to take a half day or full day off from work to drive downtown, especially when the majority of time at the courthouse is waiting for the other several cases to be called before theirs.”
5. Appearing virtually or on the phone *saves time and is more convenient* for clients and practitioners. “As a single parent and solo practitioner,” Sarah Larsen said, “I have really appreciated having most things remote” as it saves her time from not having to commute to be with her family.

Some lawyers noted that when dealing with indigent people or those who are incarcerated, additional issues need to be considered. If they do not have access to internet or a phone, it is important to have these resources available to them in a convenient and private location. Also, allowing incarcerated people to conduct “any and all civil hearings” remotely is important because “they have to pay separately for transport on civil issues,” said Brandon L. Merrill. While these anecdotal experiences and ideas are not quantitatively verified, they provide context and important qualitative information to help fill in some of the information missing from the Court User Survey.

Snapshot: A View from the Bench

Judges were not included the Court User Survey. However, Utah Judge Angela Fannesbeck shared a view “of the benefits and pitfalls of Webex or other virtual hearing platforms, and how they coincide with professional ethics and a lawyer’s responsibilities to the court and clients” in the July/August Utah Bar Journal.¹² Judge Fannesbeck acknowledges remote hearings have expanded access to equal justice for many people. She notes that for court patrons it is a less costly option that reduces the cost of legal representation, limits time away from work and removes transportation issues.¹³ Remote hearings also benefit lawyers by increasing productivity and preventing delays. Even witnesses benefit, especially if they are out-of-town or need protection.

Yet there are drawbacks to the system. Judge Fannesbeck explains that presenting evidence and properly identifying people can be challenging.¹⁴ Technology problems can make it difficult to hear or participate. She suggested there are also negative intangible consequences to virtual hearings like the informal nature of the proceedings including people wearing pajamas, revealing clothing, or appearing in public places.¹⁵ Judge Fannesbeck gives concrete ways that many of these obstacles in remote hearings can be overcome by following the guidelines and rules

¹² Judge Angela Fannesbeck, *Navigating the Half-Empty/Half-Full Dichotomy of Virtual Court Hearings*, July/August Vol. 35, No. 4 UTAH BAR JOURNAL, 13-16, p. 13 (2022).

¹³ *Id.*

¹⁴ *Id.* at 14.

¹⁵ *Id.*

provided in the Utah Code of Judicial Administration and the Supreme Court Rules of Professional Practice.¹⁶ Ultimately, she expressed that virtual hearings “have both virtue and vice that can be successfully navigated by the court, the attorneys, and the participants” as long as they each actively work together.¹⁷ This balanced and nuanced approach can maximize the advantages and minimize the shortcomings of remote hearings.

Comparison with Other State Reporting

Utah responses align with similar data collected from other states which did not have the same study limitations. For example, the DC Bar Foundation commissioned a study on the perspectives of family law litigants on remote hearings and published the report in December 2021.¹⁸ The DC report showed that “remote hearings worked well for most people. Most study participants reported being satisfied with their remote proceedings” in a diverse array of family law case types, including child custody, child support, domestic violence, and divorce.¹⁹ Specifically, the DC report found that:

- 73% appreciated not having to find and pay for transportation to/from the courthouse,
- 62% appreciated not having to take time off work or school,
- 60% appreciated not having to find childcare, and
- 72% felt safer and less threatened by the opposing party.²⁰

The Texas Office of Court Administration partnered with the National Center for State Courts to study the use of remote hearings and the impact on judicial workload.²¹ The Texas report also highlighted the benefits of remote hearings for court users including “not needing to take time off work, locate transportation, or find childcare.” and noting it can be “emotionally easier” for some parties to not be in the same room.²²

While Utah has a court environment that is distinct from these states, the similarity of these findings further validate this report: providing options and support for remote hearings improves the court experience and increases access to justice for many patrons and practitioners.

Obstacles to Participation in Remote Hearings

While remote hearings promote access to justice for many, there are obstacles to participating in remote hearings. Commonly cited examples include language barriers, accessibility, and

¹⁶ *Id.* at 15-16.

¹⁷ *Id.* at 16.

¹⁸ DC Bar Foundation, *Litigant Perspectives on Remote Hearings in Family Law Cases: A Survey Study Conducted with the DC Family Law Learning Network*, (December 2021), accessed June 12, 2022, available at https://www.dcbarfoundation.org/files/ugd/3ddb49_2c2da451535e4f9f8de6ab2baf575a54.pdf.

¹⁹ *Id.* at i.

²⁰ *Id.* at 8.

²¹ National Center for State Courts Court Consulting Division, *The Use of Remote Hearings in Texas State Courts: The Impact on Judicial Workload*, accessed June 12, 2022, available at <https://www.ncsc.org/media/ncsc/files/pdf/newsroom/TX-Remote-Hearing-Assessment-Report.pdf>.

²² *Id.* at 9.

technological challenges.²³ These obstacles have been and continue to be overcome through strategic planning and targeted resources.

Court patrons may be non-English speakers or have only a limited understanding. They also may lack full literacy or comprehension. Potential solutions include providing translation services, making court documents and instructions available in other languages, and preparing explainer videos that can be distributed online, via email, and by text message.

Court patrons and practitioners may have a recognized disability under the Americans with Disabilities Act²⁴ or experience other accessibility issues. These are often referred to as the “digital divide” meaning lack of or poor connectivity to internet or Wi-Fi signal, limited access to email, restrictions on phone minutes or data plans and other barriers to remote access.²⁵ Solutions to accommodate ADA disabilities can include offering closed captioning, keyboard accessibility, screen reader support, and having automatic transcripts available.²⁶ To bridge the digital divide, having a call-in only option for remote hearings is essential. Other solutions include court use kiosks and working with libraries and other community partners to help provide access.

Remote hearings require some level of technical proficiency in either internet or phone use. For some it can be challenging to access the necessary technology. However, similar to the above discussion on accessibility, having strong partnerships with libraries, social service providers, and other community partners can help provide needed support. Other solutions include providing explainer videos and clear instructions written in plain language. Having staff available to provide support and troubleshooting if video or sound issues occur can help correct problems that may arise.

Acknowledging there are obstacles to remote hearings is not a sufficient reason to require in-person attendance at court. Instead, this recognition can be the touchstone for change and progress. In fact, organizations like the National Center for State Courts continue to develop and release guidelines, best practices, and ways to overcome problems to effectively manage hybrid and fully remote hearings. These efforts become even more important when looking at the barriers many Utah communities face when seeking legal representation.

Barriers to Accessing Legal Representation

Deciding whether Utah State Courts will go back in-person or continue to offer remote attendance will affect all Utahns. However, it will hit some Utah communities much more than

²³ See e.g., California Commission on Access to Justice, *Remote Hearings and Access to Justice During Covid-19 and Beyond*, PPP & Cal Remote Hearings Guide - NCSC (National Center for State Courts), accessed June 12, 2022, available at

https://www.ncsc.org/_data/assets/pdf_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf.

²⁴ 42 U.S. Code § 12101 et seq.

²⁵ USLegal.com definition: “digital divide,” available at

<https://definitions.uslegal.com/d/digital-divide/#:~:text=Digital%20divide%20refers%20to%20the,technology%20and%20those%20who%20cannot.>

²⁶ California Commission on Access to Justice, *supra*.

others. There is a vast divide in how many lawyers are available based solely on where the person needing legal representation lives. This division plainly emerges when comparing the cases filed per attorney to the number of attorneys available in each Utah county.

Utah has 29 counties, and there are 8677 active attorneys in Utah.²⁷ In its directory, the Utah State Bar lists the county associated with each lawyer's preferred address. Legal representation deficiencies in many counties appear when this information is compared to the number of 2021 Utah district, justice, and juvenile court cases filed.

Table 1: Lawyers by County Compared to Cases Filed

Utah County	# of Active Attorneys	Cases Per Attorney (District, Justice, and Juvenile for FY2021)
Beaver	1	5,043
Garfield	2	1,487
San Juan	5	1,439
Juab	6	1,240
Emery	6	758
Kane	6	594
Piute	1	533
Box Elder	27	489
Duchesne	13	483
Carbon	21	387
Millard	14	377
Sevier	17	350
Sanpete	16	316
Tooele	53	304
Daggett	2	298
Rich	4	265
Uintah	34	262
Grand	17	254
Wayne	2	251
Iron	62	221
Weber	321	168
Morgan	11	154
Cache	166	133
Wasatch	74	120
Washington	340	117
Utah	1260	77
Davis	656	77
Summit	204	46

Table 1 shows access to legal representation by county where the red shades indicate the least access to attorneys and the blue shades signify the greatest access.

As the reds lighten and then turn to blue, the communities have an increasing ability to find a lawyer.

(See next page for blue shading)

²⁷ Active attorneys are those included in the Utah State Bar attorney database who are in good standing and listed as "AttUnder3," "AttActive," or "AttEmerit."

Utah County	# of Active Attorneys	Cases Per Attorney (District, Justice, and Juvenile for FY2021)
Salt Lake	5211	39

A person living in Salt Lake County can hire a local lawyer located near where they live and by the courthouse. A person living in Iron or Uintah County most likely can choose from several lawyers.

However, a person living in Beaver, Piute, Garfield, or San Juan will almost certainly struggle to find an attorney unless they can pay for and hire an out-of-town lawyer. Making the decision to continue offering remote hearings, at least for some people, cases, and circumstances can alleviate this disparity.

Recommendations

1. Utah courts should continue offering remote hearings. At a minimum, remote hearings are strongly preferred and more efficient for at least some hearings and types of actions.
2. Non-binary options for remote participation should be available, where some parts of the case may be held virtually or by video while other parts are in-person. This will remove barriers to making an appearance in court for both patrons and practitioners.
3. Hybrid options for appearing remotely should be used for ADA accommodations; resolving mobility issues for older adults; reducing the economic impact of in-person court caused by getting time off work; the cost of traveling to court and obtaining childcare; and promoting patron safety.
4. Clear explainers of common court procedures (like how to use Webex) should be created using plain language. These materials should be provided in written form and by video, which is then emailed and texted to court users as well as posted online. Written instructions can be translated into other languages as well.
5. Utah courts should conduct further study to determine which hearings and types of actions are best done remotely and which are better held in-person. They may consider expanding this court user survey to additional judicial teams statewide for this purpose.

APPENDIX C

Rule Amendment Proposals:

Utah Rules of Criminal Procedure
Utah Rules of Civil Procedure
Utah Rules of Juvenile Procedure
Utah Rules of Evidence
Utah Rules of Appellate Procedure
Utah Code of Judicial Administration

Rule Amendments – Utah Rules of Criminal Procedure	
<p>Rule 17 – The trial.</p> <p>Rule 17.5 – Hearings with contemporaneous transmission from a different location.</p>	<p>Need to consider Rule 17 and Rule 17.5 in full.</p> <p>At the time of this report, the Supreme Court’s Advisory Committee on the Rules of Criminal Procedure is reviewing these rules.</p>
<p>Rule 17(a) – The trial.</p>	<p>At the time of this report, the Supreme Court’s Advisory Committee on the Rules of Criminal Procedure is reviewing this rule.</p> <p>Previously suspended / amended by the Administrative Order, dated 4/11/2022, as follows:</p> <p><i>In all cases tried to the bench, a defendant may waive the right to appear in person at trial and consent to appear through video conferencing if the defendant has an effective opportunity to participate, which includes the ability to view trial participants and to meaningfully interact with counsel of record in real time. “Trial participants” is defined to include the judge and testifying witnesses. The defendant’s waiver and consent must be on the record and the court must make findings that the waiver and consent are voluntary.</i></p>
<p>Rule 17.5(b) – Hearings with contemporaneous transmission from a different location.</p>	<p>At the time of this report, the Supreme Court’s Advisory Committee on the Rules of Criminal Procedure is reviewing this rule.</p> <p>Previously suspended for infractions by the Administrative Order, dated 4/11/2022, as follows:</p> <p><i>Rule 17.5(b)...is suspended in infraction cases and to the extent it requires the prosecution’s consent in other cases. The parties’ consent is not required for a bench trial by remote transmission in an infraction case and a defendant may consent to a bench trial in other cases. Bench trials will be conducted as scheduled unless the court determines it is not reasonably practical to do so in a particular case, given the issues and anticipated evidence.</i></p>
<p>Rule 6 – Warrant of arrest or summons.</p>	<p>Need to consider subsection (e)(1)(E), and potentially subsection (e)(1)(D).</p>
<p>Rule 14 – Subpoenas.</p>	<p>Need to consider subsection (a)(8).</p>
<p>Rule 15.5 – Out of court statement and testimony of</p>	<p>Need to consider Rule 15.5 in full – how, if at all, does</p>

child victims or child witnesses of sexual or physical abuse - Conditions of admissibility.	Webex impact this?
<p>Rule 27 – Stays of sentence pending motions for new trial or appeal from courts of record.</p> <p>Rule 27A – Stays pending appeal from a court not of record - Appeals for a trial de novo.</p> <p>Rule 27B – Stays pending appeal from a court not of record - Hearings de novo, DUI, and reckless driving cases.</p>	These rules address appearances, using the term “appear as required.” Clarification may be helpful.
Rule 41 – Unsecured Bonds.	Need to consider subsection (b)(2) use of “appears in court.” Clarification may be helpful.

Rule Amendments – Utah Rules of Civil Procedure	
Rule 26.3 – Disclosure in unlawful detainer actions.	<p>Previously temporarily amended by the Administrative Order, dated 4/11/2022, as follows:</p> <p><i>In unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, the plaintiff shall include a completed form declaration, disclosing information relevant to federal, state, and local COVID relief law. Such declaration shall be provided with the required Rule 26.3(b)(1) disclosures.</i></p>
Rule 55 – Default.	<p>Previously temporarily amended by the Administrative Order, dated 4/11/2022, as follows:</p> <p><i>The court may not enter default judgment in unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, unless the plaintiff has submitted to the court a completed form declaration showing compliance with federal, state, and local COVID relief law. A sample form declaration will be available on the Utah State Courts website after review by the Judicial Council.</i></p>
Rule 7A – Motion to enforce order and for sanctions. Rule 7B – Motion to enforce order and for sanctions in domestic law matters.	Need to consider Rule 7A(c)(4) and Rule 7B(c)(4) .
Rule 28 – Person before whom depositions are held. Rule 30 – Depositions upon oral questions. Rule 31 – Depositions upon written questions.	Need to consider Rule 28 , Rule 30 , and Rule 31 in full.
Rule 32 – Use of depositions in court proceedings.	Need to consider subsection (a)(3) , which creates a potentially unnecessary distance limitation for depositions.
Rule 43 – Evidence.	Need to consider Rule 43 in full.
Rule 77 – District courts and clerks.	Need to consider Rule 77 in full.

Rule Amendments – Utah Rules of Juvenile Procedure	
Rule 7 – Warrants.	Need to consider subsection (d)(1) .
Rule 9 – Detention hearings; scheduling; hearing procedure	Rule 9 does not currently reference how one is to appear for the detention hearings. Clarification may be helpful.
Rule 13 – Shelter hearing.	Rule 13 does not currently reference how one is to appear for the shelter hearing. Clarification may be helpful.
Rule 18 – Summons; service of process; notice.	Subsections (a)(3) & (b)(3) each deal with appearances, but (b)(3) specifically says “appears in court.”
Rule 22 – Initial appearance and preliminary examination in cases under Utah Code section 80-6-503.	Rule 22 states that “the minor shall appear before the court as directed in the summons” (per Rule 18).
Rule 23A – Hearing on factors of Utah Code section 80-6-503; bind over to district court.	Rule 23A(c) states: The court may consider any written report or other materials that relate to the minor’s mental, physical, educational, trauma, and social history. Upon request by the minor, the minor’s parent, guardian, or other interested party, the court shall require the person preparing the report, or other material, to appear and be subject to direct and cross-examination .
Rule 26 – Rights of minors in delinquency proceedings.	Need to consider subsection (a)(1) , which requires a minor to appear “in person.”
Rule 34 – Pretrial hearing in non-delinquency cases.	Need to consider subsection (f) requires appearing in-person or by counsel.
Rule 29B – Hearings with remote conferencing from a different location (delinquency).	Need to consider Rule 29B in full..
Rule 37B – Hearings with remote conferencing from a different location (child welfare).	Need to consider Rule 37B in full.
Rule 50 – Presence at hearings.	Need to consider Rule 50 in full.

Rule Amendments – Utah Rules of Evidence

<p>Rule 615 – Excluding Witnesses</p>	<p>Rule 615 governs a party’s request to exclude a witness from a proceeding while another witness is testifying.</p> <p>Some practitioners have reported problems with multiple witnesses appearing from a single location making enforcement of the exclusionary rule difficult or impossible.</p>
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Rule Amendments – Utah Rules of Appellate Procedure

<p>Rule 29 – Oral Arguments</p>	<p>Rule 29 details how oral arguments are to be held. The rule already contemplates oral arguments being held via video conference (subsection (a)(3)), however, it does not provide a standard for approving or denying a request.</p>
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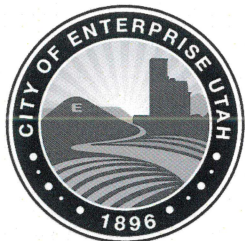
Rule Amendments – Utah Code of Judicial Administration

<p>Rule 2-205 – Expedited rulemaking procedure.</p> <p>Rule 11-105(5)(B) – Supreme Court Action on Rule Modifications.</p>	<p>Previously suspended by the Administrative Order, dated 4/11/2022, as follows:</p> <p><i>Rules 2-205 and 11-105(5)(B) of the Utah Rules of Judicial Administration are suspended to the extent they require a rule amendment that has been adopted on an expedited basis to be immediately published for comment and to be published for 45 days. Rule amendments will be published for public comment as directed by the body that adopts the rule, including reducing the time for public comment.</i></p>
<p>Rule 4-404(2)(B) – Jury Selection and Service.</p> <p>Rule 4-404(6)(C)(I) – Jury Selection and Service.</p>	<p>Previously suspended / amended by the Administrative Order, dated 4/11/2022, as follows:</p> <p><i>[(2)(B)] The calculation of time for determining juror terms of availability under rule 4-404(2)(B) of the Utah Rules of Judicial Administration is suspended. The suspension will be lifted for a particular court when jury trials resume in that court.</i></p> <p><i>[(6)(C)(I)] The summons may be by first class mail delivered to the address provided on the juror qualification form, <u>by email to the email address provided on the [...] form</u>, or by telephone.</i></p>
<p>Rule 4-503 – Mandatory Electronic Filing</p>	<p>The Judicial Council should amend this rule to accommodate email filing in some circumstances.</p>
<p>Rule 2-103 – Open and closed meetings.</p>	<p>While the Judicial Council already provides notice to the public about its meetings (through the Utah Public Notices website), the Judicial Council should consider including in</p>

Appendix C – Rule Amendments

	that notice the Webex link to the meeting.
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Tab 8



CITY OF ENTERPRISE

P.O. Box 340
Enterprise, Utah 84725
(435) 878-2221 • Fax: (435) 878-2311

Agenda

September 1, 2022

Jim Peters
Justice Court Coordinator
Administrative Office of the Courts
PO Box 140241
Salt Lake City, UT 84114-0241

RE: NOTICE OF INTENT TO DISSOLVE JUSTICE COURT

Dear Mr. Peters

Pursuant to UCA 78A-7-123(2), this letter provides notice to the Utah Judicial Council that the City of Enterprise intends to dissolve the Enterprise City Justice Court. Enclosed with this letter is Resolution 2022-009 adopted by the Enterprise City Council on August 24, 2022. UCA 78A-7-123(3) allows for the usual time minimum of one year for court dissolution to be shortened upon request. Pursuant to 78A-7-123(3) of the Utah Code the City of Enterprise requests that this time be shortened to allow a December 31, 2022 dissolution date, or as soon thereafter as the Judicial Council allows the dissolution to take effect.

If you require any further information regarding this notice, please contact us.

Sincerely,

Brandon Guy Humphries
Enterprise City Mayor
mayor@enterpriseutah.org
435-878-2221

RESOLUTION NO. 2022-009**A RESOLUTION AUTHORIZING THE DISSOLUTION OF
THE ENTERPRISE CITY JUSTICE COURT**

WHEREAS: the City of Enterprise ("City") currently has the Enterprise City Justice Court ("Court") to serve the city's justice court needs; and

WHEREAS: the Enterprise City Council has determined the Court no longer justifies its cost to the City, and

WHEREAS: the City Council has determined that it would be in the best interests of the residents of the City that the Court be dissolved and that the cases be handled by the Washington County Justice Court which serves the areas of Washington County that do not fall within the jurisdiction of a municipal justice court; and

WHEREAS: the City wishes to dissolve the Court,

NOW THEREFORE BE IT RESOLVED by the Enterprise City Council as follows:

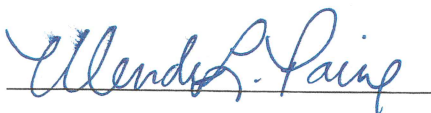
1. The City shall take those steps required to meet all the statutory conditions outlined in UCS 78A-7-123-(2) & (3) necessary to dissolve the Enterprise City Justice Court; and
2. Upon completion of all the requirements, the Enterprise City Justice Court shall be dissolved on December 31, 2022, or as soon thereafter as the Judicial Council allows the dissolution to take effect.
3. The Resolution shall become effective immediately upon adoption.

PASSED AND APPROVED by the City Council of the City of Enterprise, Utah, on the 24th day of August, 2022.

City of Enterprise


Brandon G. Humphries, Mayor

Attest:



Wendy L. Paine, City Recorder



78A-7-123 Dissolution of justice courts.

- (1)
 - (a) The county or municipality shall obtain legislative approval to dissolve a justice court if the caseload from that court would fall to the district court upon dissolution.
 - (b) To obtain approval of the Legislature, the governing authority of the municipality or county shall petition the Legislature to adopt a joint resolution to approve the dissolution.
 - (c) The municipality or county shall provide notice to the Judicial Council.
 - (d) Notice of intent to dissolve a Class I or Class II justice court to the Judicial Council shall be given not later than July 1 two years prior to the general session in which the county or municipality intends to seek legislative approval.
 - (e) Notice of intent to dissolve a Class III or Class IV justice court to the Judicial Council shall be given not later than July 1 immediately prior to the general session in which the county or municipality intends to seek legislative approval.
- (2)
 - (a) A county or municipality shall give notice of intent to dissolve a justice court to the Judicial Council if the caseload of that court would fall to the county justice court. A municipality shall also give notice to the county of its intent to dissolve a justice court.
 - (b) Notice of intent to dissolve a Class I or Class II court shall be given by July 1 at least two years prior to the effective date of the dissolution.
 - (c) Notice of intent to dissolve a Class III or Class IV court shall be given by July 1 at least one year prior to the effective date of the dissolution.
- (3) Upon request from a municipality or county seeking to dissolve a justice court, the Judicial Council may shorten the time required between the city's or county's notice of intent to dissolve a justice court and the effective date of the dissolution.

Renumbered and Amended by Chapter 3, 2008 General Session

Tab 9

Agenda

JUSTICE COURT REFORM TASK FORCE

**REPORT AND RECOMMENDATIONS TO THE
UTAH SUPREME COURT AND UTAH JUDICIAL COUNCIL**

AUGUST 2021

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ATTACHMENTS

- A. Task Force Membership
- B. Presentations to the Task Force
- C. Documents Reviewed
- D. Summary of Prior Utah Justice Court Reform Efforts

I. INTRODUCTION

a. Background

In December 2019, the Utah Supreme Court and Utah Judicial Council created the Justice Court Reform Task Force. The Council took responsibility for the ongoing direction of the Task Force. The purpose of the Task Force was to complete a comprehensive evaluation of justice court structure and operations, and report back to the Council with recommendations to strengthen and improve the provision of court services at the misdemeanor and small claims level.

The Council invited stakeholders to provide representatives to serve as members of the Task Force. Membership includes representatives from the courts, the legislature, the governor's office, prosecution and defense organizations, members of the bar, the Utah League of Cities and Towns and the Utah Association of Counties. A list of members and the constituencies they represent is included as Attachment A.

b. Scope of Work

The Task Force began meeting monthly in May of 2020. To inform its recommendations, the Task Force received input from various stakeholders and involved parties, reviewed thousands of pages of reports and documents, and reviewed prior reforms in Utah. Additional detail is provided in Attachments B through D as follows:

- Attachment B: A list of individuals and organizations that made presentations to the Task Force
- Attachment C: A list of the documents and reports reviewed by the Task Force
- Attachment D: A summary of prior reforms implemented in Utah since the creation of justice courts in 1989

c. Why Reforms Are Necessary

Public trust and confidence in the judiciary is critical for courts to be effective and for the rule of law to prevail. Every effort should be made to improve public access to justice, to improve the quality of justice provided, and to improve the public perception of the courts. While the judiciary in the United States and in Utah can be, and has been, used as a model in other jurisdictions, there are areas where improvements can be made.

The Task Force believes that the reforms recommended below would increase public access to justice, improve the quality of justice provided and improve public perception of court services at the infraction, misdemeanor, and small claims level. These efforts are critical as this is the court level where most citizens come into contact with the judicial system. Following are some areas in which reforms could be implemented to strengthen the court system.

1. Transparency and Accountability:

Judicial decisions and behavior are monitored primarily in three different ways. These include (1) the Judicial Conduct Commission ("JCC") which investigates complaints regarding judicial behavior, (2) the appeal process through which a higher court reviews the decision of a lower court, and (3) the

Judicial Performance Evaluation Commission (“JPEC”) which conducts judicial evaluations to provide voters with background information prior to judicial retention elections. While the JCC functions the same at all court levels, appeals and the JPEC process function differently at the justice court level.

A party that believes a judicial decision was in error has the right to file an appeal in which a higher court can review that decision and correct any errors. Appeals from justice courts are currently heard de novo by the district court. There is no review of a justice court judge’s decision. The judge receives no feedback, positive or negative, and there is no public record available for review. Additionally, because there are very few appellate decisions arising from the justice courts there is an absence of case law on issues that often arise in these courts. The Task Force believes that providing for an on-the-record appeal in misdemeanor and small claims cases would improve public trust and confidence in the courts as well as the quality of justice provided.

JPEC is charged with evaluating judges of all court levels and making recommendations for retention. Those recommendations are provided to the public online and in voter information pamphlets prior to each election. A significant number of justice courts are part-time. Some hear only a handful of cases per month. These courts are also located throughout the state and not just in population centers or county seats like the district court. Many of the part-time rural courts are served by judges that do not have law degrees and work full time in other occupations. Because of the logistical difficulty, JPEC is unable (and not required) to provide a full evaluation for these courts. As a result, very little information, positive or negative, is made available to the public regarding the performance of the judges serving in these courts.

2. Indigent Defense Services:

The responsibility for providing indigent defense services in Utah is left to local government. As a result, the provision of those services fluctuates significantly throughout the state. Concerns arising from this system were documented by the Judicial Council and in The Sixth Amendment Center’s 2015 Report. The concerns were most dramatic in the justice courts, where some defendants were arraigned and sentenced (both critical stages) to jail time or suspended sentences without the opportunity to have a defense attorney present. While the creation of the Indigent Defense Commission has improved some aspects of indigent defense, the concerns are still present at the justice court level. Such concerns will likely always be present under the current structure where small, part-time courts exist, and the provision of indigent defense services is primarily the responsibility of local governments. For this reason, the Task Force recommends changing the way misdemeanor offenses are processed.

The appointment of counsel is the courts’ responsibility, and the courts can make many no-cost internal improvements with or without structural reforms. In this regard, if structural reforms are not implemented, the Task Force recommends that the AOC work with Utah’s justice court judges on training and internal reforms to increase the consistency and constitutionality of the courts’ procedures around the appointment of counsel to indigent individuals. This should include: adopting uniform forms for the procedures for the appointment of counsel which are consistent with the Utah Code, Court Rules, and case law; the adoption of appropriate policies if courts are going to recoup public defender fees so that any such recoupment is consistent with the requirements of United States Supreme Court precedent; and the Judicial Council should reconsider the certification process for justice courts and whether it is adequate to comply with the courts’ responsibilities for the provision of indigent defense services.

3. Judicial Education and Experience Requirements:

Currently, applicants for justice court positions in class I and II counties are required to have graduated from law school. They cannot be required to be members of the bar due to Article VIII, Sec. 11 of the Utah Constitution. Applicants for justice court positions in other counties are not required to have any educational background other than a high school diploma.

There has been a trend throughout the United States in recent decades to move away from judges who are not members of the bar. As of 2020, twenty-eight of the fifty states already require judges handling misdemeanor criminal offenses to be lawyers. Nearly all scholarly and professional studies and reports on this topic recommend requiring judges to be lawyers. As an example, the Conference of State Court Administrators recommended in their 2013-2014 Policy Paper that judges of limited jurisdiction courts should be lawyers. Prior unsuccessful legislative efforts in Utah would have required all judges to be members of the bar. Some jurisdictions have even found a system of non-lawyer judges to be unconstitutional. For example, in Gordon v. Justice Court, 12 Cal 3d 323 (Cal. 1974) the California Supreme Court ruled it was a violation of due process to allow non-lawyers to preside over cases which could result in incarceration of the defendant.

Even more important than these trends, moving away from non-lawyer judges is necessary to address the concerns surrounding, and potential elimination of, de novo appeals in misdemeanor cases. In North v. Russell, 427 U.S. 328 (1976) the U.S. Supreme Court ruled that allowing non-lawyer judges to preside over cases involving potential incarceration did not violate the constitution so long as a defendant had the right to a second trial before a lawyer judge. The elimination of the de novo process without also eliminating non-lawyer judges would be a violation of this holding. It is therefore recommended to move away from non-lawyer judges to advance the important goal of eliminating de novo appeals.

Despite these recommendations, the Task Force does recognize the valuable contribution non-lawyer judges have made to the citizens of Utah. These judges have received significant training and experience and have made career decisions and personal sacrifices to provide this public service. As a result, the Task Force recommends moving forward in a way that would make changes over time, primarily through attrition, that would require as little displacement to currently serving judges and court staff as possible.

4. Financial Concerns:

Fine and fee revenues generated by justice courts are currently split between various accounts pursuant to state statute. The local government entity sponsoring the court is one of the entities that receives money generated by the court. Naturally, when more cases are filed (particularly traffic offenses) more revenue is generated.

Consistent with the broader recommendations, and to create consistency across the courts and administration under the judicial branch of government, the Task Force recommends changes that would decouple the courts from concerns about revenue generation.

The connection between case filings and revenue generation for the local government entity has been criticized, sometimes unfairly, by the media and others. For example, the following articles from local media have been published over the years. "Justice courts rake in the cash," Elizabeth Neff, Salt

Lake Tribune, July 17, 2015. “Should the role of justice courts be curtailed?” Marissa Lang and Robert Gehrke, Salt Lake Tribune, September 2, 2013. “Justice courts rake in the money; critics say some courts just interested in collecting fines.” Lorry Prichard and Kelly Just, Deseret News, February 3, 2011. “Justice swift, profitable.” Brady Snyder, Deseret News, April 18, 2003. While some changes have been made to address this issue, there is still a public perception that local entities view justice courts as revenue generators. These recommended changes would address this perception.

5. Substance Abuse and Mental Health Treatment

Courts handling misdemeanor cases are an important avenue for individuals to get access to appropriate treatment. Substance use disorders and mental health disorders are chronic illnesses with periodic acute episodes. Recovery from these illnesses is a process and not a single event. Compliance with court-ordered treatment is a continuum. Whatever a court does to hold an individual accountable should acknowledge their condition. The best outcomes will be achieved when the court and the attorneys understand the illness, respond with the most appropriate treatment, and then hold the individual accountable through appropriate sanctions.

Best practices would:

- Recognize that addiction and mental health disorders are chronic diseases with periodic acute episodes and that the court’s response must be tailored to the individual to address that reality;
- Ensure judges and attorneys understand the processes, purposes and limitations of treatment and drug testing;
- Apply sanctions or sentences that address criminogenic factors and also support an individual's progress toward recovery;
- Provide justice court judges and parties connections with the treatment community to facilitate access to assessment and referral resources and help to educate the court, attorneys and parties on those resources; and
- Refer individuals only to treatment providers and treatment modalities that are proven through practice to be effective, and track the provider’s fidelity to that practice.

This sort of attention to recovery and collaboration—together with accountability—is integral to the success of both the courts and the individuals who come before the court. Court decisions that recognize the challenges of treating a disease and which respond with a problem-solving approach will achieve the best outcomes for the individual and the community.

It is difficult, especially for small courts and courts outside the Wasatch Front, to use a problem-solving model and access appropriate treatment providers. While many of these best practices can, and should, be encouraged in the current justice court system, the structural reforms presented here would provide a better opportunity to fully implement these practices. Drug, mental health, and veterans court models could be established for misdemeanors under the proposed structure whereas most justice courts do not currently have the resources necessary to implement these programs. Earlier and more effective intervention at the misdemeanor level should result in fewer individuals entering the District Court system and an overall reduction in crime.

d. Guiding Principles

Over the course of its work, the Task Force has identified several principles that are essential to deliver justice in misdemeanor and small claims cases. Implementation of these principles is necessary to protect judicial independence, ensure parties' constitutional rights, provide transparency and adequate oversight of judges and courts, and increase public trust and confidence.

The recommendations set forth by the Task Force attempt to implement these guiding principles to the greatest extent possible, while recognizing the practical considerations set forth in the next section. These guiding principles include:

1. Qualified Judge. A qualified judge is essential. Bar membership is also a necessary prerequisite to the elimination of de novo appeals in misdemeanor cases. The application, selection process and criteria should ensure the greatest number of qualified applicants. Full-time judicial positions are also preferable.
2. On-the-Record Appeal. Access to an on-the-record appellate process is important in creating public trust and confidence in the courts. Such an appellate process provides individuals an opportunity to have judicial decisions reviewed, creates a body of law to guide future decisions, gives feedback and correction to judges, and provides transparency into the decisions made by judges.
3. Right to Counsel. Absent a knowing and intelligent waiver, all individuals accused of crimes involving the potential for incarceration should have counsel present at all critical stages of their case, including at arraignment.
4. Article VIII Courts. Courts of all levels in Utah are authorized by Article VIII of the Utah Constitution. While all other court levels are operated at the state level, justice courts were created by statute to be funded and operated by local government entities. Such courts are still governed by the Utah Supreme Court and Utah Judicial Council. This structure can create confusion and tension. Separation of the functions of each branch of government is necessary to insulate courts from political and financial pressures.
5. Substance Abuse and Mental Health. Substance abuse and mental health are significant concerns in the criminal justice system, particularly in misdemeanor cases where services are not as readily accessible. Consolidation of criminal courts would allow individuals greater access to treatment, probation and other services.

e. Practical Considerations

The Task Force understands that there are practical considerations that could make some reforms difficult to implement. These include financial and political considerations and difficulties created by the current legal or organizational structure. The Task Force recommendations attempt to achieve the guiding principles set forth above to the greatest extent possible while taking into account the following practical considerations.

1. Constitutional Amendments. A constitutional amendment should be avoided if possible. The amendment process is lengthy, difficult and opens a window for the possibility of unwanted outcomes.
2. Revenue Neutrality. Reforms should be as revenue neutral as possible. Reforms that have a significant financial impact are less likely to be implemented. A preliminary review of justice court finances suggests that the justice court system, as a whole, may be financially neutral with expenses and revenue being approximately even. However, this is an estimate at this point and circumstances of individual courts and localities may vary with some courts generating revenue and others operating at a loss. If the Task Force's recommendations are adopted, it recommends creating a working group to further evaluate the financial implications of these reforms.
3. Urban/Rural. Reforms must consider the differences between, and the needs of, urban and rural communities throughout the state.

II. RECOMMENDATIONS

a. Structural Proposal:

The Task Force recommends the following changes to court structure:

1. There should be created, by statute, a Division within the District Court. The final name for this Division should be determined during the implementation phase and should consider the input of stakeholders. The Task Force has discussed, and presents here, the following names for consideration: Local Division, Community Division, Community Access Division, Misdemeanor and Small Claims Division, and Circuit Court. The Court will be referred to throughout the remainder of this proposal as the "Division." Judges would be referred to as Division Judges. The Division would have jurisdiction over all small claims cases and misdemeanors (including Class A misdemeanors) in the judicial district. The Division would also have jurisdiction over cases involving infractions when there is not a justice court with jurisdiction. The Division would be a court of record. Appeals from the Division would be to the Utah Court of Appeals and on the record. Division judges would also be assigned magisterial duties such as pretrial release decisions and search warrants. Division courts could be housed with the District Courts or in current justice court facilities through local agreements.
2. Justice courts would remain as presently constituted, and their jurisdiction would be limited to infractions. Sections 78A-7-105 and 106, and possibly others will need to be amended to accomplish this. Justice courts would remain courts "not of record" with de novo appeals filed in the District Court.

There is some concern that by limiting justice court jurisdiction to infractions (and by limiting revenue generating capabilities, which is discussed below) some localities may choose to close their justice court. This is a possibility. However, this proposal also creates the opportunity for the

decriminalization of many offenses as the state and localities shift some low-level offenses that are currently classified as misdemeanors to infractions. Such a change could have a positive impact on broader criminal justice reforms.

b. Necessary Reforms as a Result of the Proposal:

Based on current constitutional and statutory language, implementing the recommendations above would result in, or necessitate, the following changes:

3. Division Judges would be required to be members of the bar, as required of all judges of courts of record (See Art. VIII, Sec. 7, Utah Constitution).
4. Following a transition period, all Division Judges should be required to serve full time. Because Article VIII, Section 10, of the Utah Constitution prohibits judges in courts of record from practicing law, a small, part-time judicial position (where bar membership is required and the practice of law is not allowed) would likely not attract as many qualified candidates.
5. Article VIII, Section 8 of the Utah Constitution requires that “vacancies” on courts of record be filled by the Governor, pursuant to the process authorized by that section and related statutes. The Task Force proposes creating the Division Courts through a process of consolidation between the District and Justice courts whereby currently serving justice court judges with law degrees would become Division Court Judges upon creation. (This would include part-time judges. As part-time judges resign or retire, those part-time positions should be eliminated.) “Vacancies” to be filled by the Governor would occur if positions remain unfilled through the creation process and as judges retire or resign in the future. Statutes would need to be adopted providing for the nominating commission process for Division Court judges. Nominating commissions for selection of Division Court judges should allow for local representation by including local representatives similar to the current nominating commissions.
6. All justice court judges currently serving would be retained in office and continue to serve as justice court judges.
7. As would be required by Article VIII, Sec. 6 of the Utah Constitution, the number of Division judges would be established by statute.
8. Rules of procedure for the Division Courts will need to be created. These should consider access to justice issues and judicial efficiency. New rules of appellate procedure should also be enacted to expedite and simplify the appellate process on cases arising from the Division. The Task Force would recommend that the appropriate Supreme Court Rules Committees be tasked with proposing the appropriate appellate and procedural rules to implement these reforms. The Task Force would also recommend that Rules 7, 7A, 27A and 27B of the current Utah Rules of Criminal Procedure be considered and incorporated into the new rules due to their efficient processing of misdemeanor cases and appeals therefrom.

9. Statutes should be enacted requiring indigent defense counsel to be present for all misdemeanor cases. Providing indigent defense services in the Division would utilize the services currently being provided in the District. Provisions should be enacted to allow the appearance of indigent defense counsel by remote means, particularly for Divisions in remote locations where such services may not be readily available in person.
10. While the de novo appeal process has its shortcomings, it is an effective and efficient tool for defendants to correct errors in their case. Tools like this are especially important in cases involving misdemeanor offenses where collateral consequences may be high, but less time and resources may be devoted to the adjudication of the case. Also, because the consequences, both direct and collateral, may take effect immediately upon judgment, a lengthy appeal process may render some issues moot and irreparable harm done before appellate review is ever obtained. As a result, a process should be considered to replace this de novo appeal tool. A defendant's right to withdraw a guilty plea should be expanded, and a lesser burden required, for plea withdrawal in misdemeanor cases (see Utah Code § 77-13-6).
11. Additional Appellate Court judge positions as well as staff and staff attorney positions will need to be created. The Task Force believes that the increase in Appellate Court caseload should correspond to a similar reduction in District Court caseload and efficiencies created by having Division judges handle Class A misdemeanors and magisterial duties. However, this offset cannot be guaranteed and additions at the Appellate Court level cannot be contingent upon the anticipated reductions created elsewhere.

c. Additional Recommendations:

While not necessary to implement the recommended structural changes, the Task Force does recommend the following reforms to fully implement the Guiding Principles identified above:

12. Statutes should be enacted to clarify that justice courts are a part of the Judicial Branch of government (as established by Article VIII) and are under the direction of the Utah Supreme Court and Utah Judicial Council. Employees of such courts should take direction from these bodies and the judge, and from their locality secondarily to the extent such direction does not conflict with that from the Court or Council.
13. The salary for full-time Division Judges should be set at 90% of a District Court judge's salary. A part-time Division Judge's salary would be prorated by applying the weighted caseload percentage to the full-time amount. Justice court judges' salaries should also be standardized at a fixed amount. The salary for all other judges in the state is fixed at a set amount. The same should apply to these judges. Benefits for all full-time judges should also be the same for judges of all court levels.
14. Accounting model 2 (where local government employees accept court payments) should be eliminated. Only court employees should be allowed to accept court payments. A

system should be implemented that would allow Individuals to pay amounts due to any court online or at any court location in the state.

15. Geographic restrictions on applying for Division Court positions should mirror that for the District Court (may apply from anywhere but must reside in the District upon appointment). For justice court positions, Utah Code § 78A-7-201 should be amended. This section limits applicants to those who have been living for the previous six months in the county, or adjacent county, in which the court is located. Individuals should be allowed to apply without any geographic restriction but following appointment should be required to live in the county or an adjacent county.
16. The Administrative Office of the Courts should assume a greater role in administration of justice courts. Practices, procedures, and forms should be standardized throughout the judicial districts.

d. Recommendations Related to Small Claims Cases:

The Task Force makes the following recommendations regarding small claims cases.

17. All small claims cases should be heard on the record in the Division.
18. Small claims cases should be separated between private and commercial claims.
19. Commercial claims would include landlord tenant and debt collection cases, or other cases where one party is or owns a business that appears in court as a plaintiff more than four times during a year.
20. The current restriction on third-party debt collection cases proceeding under small claims procedures should be removed.
21. The filing fee for commercial claims should be increased. The funds from the increase should be used to pay for attorneys or Licensed Paralegal Practitioners who would be present at all commercial small claims proceedings to provide assistance and representation to otherwise unrepresented parties in landlord tenant and debt collection cases.
22. The Online Dispute Resolution program should be expanded to all small claims cases throughout the state. This will allow greater access to justice for parties and allow courts to process these cases with greater efficiency.
23. Amendments to small claims rules and/or the creation of new procedural rules will need to be enacted for civil cases in the Division Courts. These should take account of access to justice issues and judicial efficiency, and consider efficient and limited discovery in these cases in coordination with the ODR process. The Task Force would recommend

that the appropriate Supreme Court Rules committees be tasked with proposing the appropriate appellate and procedural rules to implement these reforms.

24. Pro tem judges currently serving in justice courts should be encouraged to serve as facilitators in the ODR program. The Courts could also partner with mediation programs at local universities to provide ODR facilitators. Trials of all small claims cases should be heard by Division Court judges, not pro tem judges.
25. Webex hearings should be made available in small claims cases not only for parties, but to allow volunteers and attorneys to be present remotely.

e. Simplified Process for Infractions:

26. A simplified process for resolving infractions should be explored. Hawaii has such a process in place and some aspects could be used as a model. Under this model, when a defendant wants to contest a charge they can request an informal hearing before the judge. The rules of evidence and procedure do not apply. The citing officer also appears, and a prosecutor is not present. If the defendant is unhappy with the resolution, they have the right to appeal and have a formal trial at the District Court. The Online Dispute Resolution program currently being implemented in small claims cases could be expanded and used for resolution of infractions.

The benefits of this type of a model include greater efficiency for the court and eliminating the need for prosecution resources that can then be focused on misdemeanor cases. Many defendants are also intimidated by the formal criminal process and just want to be heard. This process would also be more efficient for defendants, especially if an ODR program were implemented, or if remote hearings were allowed.

There are some concerns that need to be addressed if such a model is implemented. First, jail time is not available as a sentence for infractions. However, if a court is allowed to use its contempt power to impose jail on an individual who fails to pay a fine on an infraction, this could be used as an end-run around the procedural protections that are currently in place. As such, the court's contempt powers would need to be addressed. Second, eliminating some of the formality and oversight could exacerbate some of the revenue concerns that exist with the current justice court model. Protections should be put in place to ensure there is not an increased pressure, or incentives, to raise revenue. Third, defendants must be adequately informed of their right to request a hearing and a trial and there should not be any fee imposed for exercising their right to either.

Events of the last two years including protests, the George Floyd case, and others have highlighted the importance of even minor interactions with law enforcement. The majority of these interactions will be in relation to traffic cases which will be processed in the justice courts with these informal proceedings. It is beyond the scope of this Task Force to address policing or other policy issues. However, the Task Force does not want to suggest that just because infraction cases do not carry the potential for jail time and would be handled under a more informal process, that they are not important or deserve scrutiny.

III. OPTIONS THAT WERE RULED OUT

Based on the guiding principles and practical considerations discussed above, the following options were considered but not recommended by the Task Force at this time.

a. Dissolve Justice Courts

Justice courts could be dissolved, and all cases could be handled by a unified, state court system. This is the option California chose. As of 2001, all justice courts had been consolidated into the state court system. This option would address the concerns that have been raised with justice courts. Article VIII, Section 1 of the Utah State Constitution provides:

The judicial power of the state shall be vested in a Supreme Court, in a trial court of general jurisdiction known as the district court, and in such other courts as the Legislature by statute may establish. The Supreme Court, the district court, and such other courts designated by statute shall be courts of record. *Courts not of record shall also be established by statute* (emphasis added).

The Task Force has discussed two possible meanings of the language, “Courts not of record shall also be established by statute.” One possible meaning is that a structure providing for courts not of record is required. A second possible meaning is that if courts not of record are going to be established and operated by local governments, it must be done by statute. In other words, a local governmental entity would not have inherent authority to create and operate a court. Rather, it must be done by statute at the state level.

While it is clear that local governmental entities are not required to operate a justice court, it is not clear to the Task Force which interpretation of this constitutional language is correct. Under the first interpretation, a constitutional amendment would be required to eliminate justice courts. Eliminating justice courts under the assumption that the second interpretation is correct could result in constitutional challenges. To avoid a debate or constitutional challenges, the Task Force has proposed moving forward with an approach that does not require a determination of this question.

There are also approximately 84 justice court judges, hundreds of court staff, and many local government leaders that have an interest in the justice courts. Proposing to eliminate these courts could create significant political opposition and result in unnecessary upheaval. For these reasons, the Task Force has not recommended elimination of justice courts.

b. Convert Justice Courts to Courts of Record

Another approach that was not adopted was that justice courts could remain in place but would be designated courts of record with an appeal to the Utah Court of Appeals. While this would resolve the de novo appeal concerns, other issues raised about the current justice court structure would not be addressed. This option would also require a constitutional amendment to several sections in Article VIII.

c. Structure Justice Courts According to the Population of the County

Options were discussed that would structure courts differently based on the size of the county (similar to the current education requirements for judges). However, treating cases and defendants

differently based on the size of the county could result in constitutional challenges. Defendants charged with similar offenses need to be afforded the same rights and opportunities without regard to the size of the court or jurisdiction.

IV. TRANSITION PLAN

The Task Force views its work up to this point as a first step. The Task Force believes it has identified general principles and best practices that should be adopted to strengthen the judicial branch. Implementation of these principles and practices involves additional work. The Task Force recommends the following going forward:

a. Timing:

The Task Force recommends that any changes to the court system be implemented over time, through attrition, requiring as little displacement to currently serving judges and court staff, prosecution and defense counsel, and other stakeholders, as possible. The Task Force recommends that implementing legislation take into account these considerations and provide effective dates in the future to allow courts, local governments, and other affected parties sufficient time to prepare for the transition.

b. Financial Concerns:

On a macro level, justice courts appear to be financially neutral. Justice courts statewide generate approximately \$42 million annually in fines and fees. The cost of operating these courts is also approximately \$42 million. On a micro level, these proposed changes could have significant financial effects on some jurisdictions. Circumstances of individual courts may vary with some generating significant revenue for the local government entity while others are a significant financial burden. Typically, courts with a high percentage of traffic cases generate more revenue while courts with a higher percentage of criminal cases operate in the negative. The Task Force anticipates that, in addition to shifting the caseload of these courts, a corresponding shift of revenue would need to occur to fund the operation of the new courts. This could result in less revenue being received by some jurisdictions.

The Task Force also acknowledges the time and resources some communities have invested in their justice courts. In some cases that includes courthouses and courtrooms. Efforts to implement this proposal should take into account those resources and seek, through cooperation and local agreements, to utilize them to the benefit of all involved.

While financial concerns will necessarily be addressed, the Task Force encourages all stakeholders to consider issues of access to justice, fundamental fairness, avoidance of financial conflicts of interest, improving the public perception of local courts, and other necessary components of a constitutional and fair judicial system, regardless of individual financial considerations.

The financial impacts of this proposal will likely be a significant factor in its implementation. The Task Force recommends the creation of a working group to study in greater detail the financial impacts, both to the state and to local governments, associated with these recommendations. Such a working group could include court administrators, AOC and local government accountants and financial officers and others.

c. Court and Administrative Rules:

The Task Force recommends that the appropriate Supreme Court rules committees be tasked with drafting proposed rules of procedure simultaneously with the advancement of this proposal. The impacts of this proposal cannot fully be known without understanding the rules and processes that would be in place. The expertise of those serving on these various committees should be included in this project. Similarly, the Judicial Council's Policy and Planning Committee should be tasked with evaluating what administrative rules need to be amended or enacted to implement this proposal. Ultimately a package that includes this proposal, proposed rule changes, and proposed legislative changes should be presented as a unified and complete proposal. Again, the Task Force encourages these bodies to prioritize access to justice, trust and confidence in the courts, and other similar principles that are fundamental to, and would further strengthen, our judicial system.

d. Statutory Changes:

Implementation of this proposal will require significant legislative changes. Many details will need to be decided upon. Just one example would be proper venue of cases in the new courts. Such details could have a significant effect on the ultimate effectiveness of this proposal. The Task Force recommends that the Judicial Council, through its Legislative Liaison Committee, and working with such other stakeholders or parties as the Committee sees fit, begin working on proposed statutory language. The goal should be to implement the principles set forth in this proposal and to create a unified package for consideration by all affected parties and branches of government.

Utah Justice Court Reform Task Force
Report and Recommendations to the Utah Judicial Council

Attachment A – Membership

<u>Name</u>	<u>Position</u>	<u>Organization Represented</u>
Chair: Judge Paul C. Farr	Justice Court Judge (Alta, Herriman, Sandy)	Judicial Council
Anna Anderson	Prosecutor	Salt Lake District Attorney's Office
Judge Brian Brower	Justice Court Judge (Clearfield, Sunset and Morgan County)	Board of Justice Court Judges
Paul C. Burke	Attorney (Ray, Quinney & Nebeker) and Chair of the Utah Supreme Court's Advisory Committee on the Utah Rules of Appellate Procedure	Utah Supreme Court
Senator Kirk Cullimore	Attorney and State Senator	Utah State Senate
Judge Brent Dunlap	Justice Court Judge (Iron County)	Board of Justice Court Judges
Ron Gordon	State Court Administrator	Administrative Office of the Courts
Judge Roger Griffin	Fourth District Court Judge	Board of District Court Judges
Representative Craig Hall	Attorney and State Representative	Utah House of Representatives
Judge Ryan M. Harris	Appellate Court Judge	Utah Court of Appeals
Joanna Landau	Attorney, Executive Director Utah Indigent Defense Commission	Utah Indigent Defense Commission
Ryan Robinson	Prosecutor (West Valley), President of the Statewide Assoc. of Prosecutors	Utah Statewide Assoc. of Prosecutors
George Sutton	Attorney (Jones Waldo)	Representing <i>Pro se</i> Defendants in Small Claims
Ann Marie Taliaferro	Attorney (Brown, Bradshaw & Moffat)	Utah Assoc. of Criminal Defense Lawyers
Commissioner Jerry Taylor	Garfield County Commissioner	Utah Association of Counties
Roger Tew	General Counsel and Policy Advisor for Utah League of Cities and Towns	Utah League of Cities and Towns
Staff: Michael Drechsel	Assistant State Court Administrator	Administrative Office of the Courts
Staff: Cathy Dupont	Deputy State Court Administrator	Administrative Office of the Courts
Staff: James Peters	State Justice Court Administrator	Administrative Office of the Courts

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Attachment B – Presenters

<u>Name</u>	<u>Position</u>	<u>Presentation:</u>
Judge Rick Romney	Justice Court Judge, Chair of Board of Justice Court Judges	Board of Justice Court Judges
Senator Kirk Cullimore	State Senator and attorney representing plaintiffs in small claims	Small claims plaintiffs
Ben Marsden and Heather Robison	Law Clerks / Interns	Background research
Michael Zimmerman	Former Utah Supreme Court Chief Justice	History of the Judiciary and specifically Circuit Courts
Joanna Landau	Executive Director, Indigent Defense Commission	Indigent Defense in Justice Courts
Dr. Jennifer Yim	Executive Director of the Judicial Performance Evaluation Commission	JPEC's perspective on Justice Courts
Justice Deno Himonas	Utah Supreme Court Justice	Online Dispute Resolution Program
Judge Jon Carpenter	Justice Court Judge	"
Judge Brendan McCullagh	Justice Court Judge	"
Kim Zimmerman	Justice Court Clerk and AOC staff	"
Brody Arishita	AOC Staff	"
Clayson Quigley	AOC Staff	"
Jeff Hastings	AOC Staff	"
Dr. Kim Free	Judicial Educator, Utah AOC	Clerk and Judicial Education perspective
Jim Peters	State Justice Court Administrator	Appeal and financial statistics
Judge Paul C. Farr	Task Force Chair and Justice Court Judge	Justice Court structure and statistics
Kim Cordova	Executive Director of the Commission on Criminal And Juvenile Justice	Substance abuse and mental health issues in justice court
Elizabeth Klc	Director of Utah Substance Abuse Advisory Council	"
Patrick Fleming	Chair of Utah Substance Abuse Advisory Council	"
Adam Trupp	Assistant Director, Utah Indigent Defense Comm.	"

Keisa Williams	General Counsel, AOC	Pretrial Release Practices
Karl Sweeney	Director of Finance, AOC	Financial practices and accounting
Wayne Kidd	Director of Audit, AOC	"
Diane Williams	Auditor	"
Professor Alexandra Natapoff	Harvard Law School, nationally recognized scholar on misdemeanor court system	Misdemeanor court practices
Dillan Passmore	Law Clerk / Intern	Informal Adjudication of Infractions

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Attachment C – Materials Reviewed

- “Enhancing Caseflow Management to Ensure Effective Assistance of Counsel,” Justice Programs Office, School of Public Affairs at American University. January 2020.
- “Final Reflections Paper – Income Based Fines,” Thomas Kelley, University of Utah Law School. Spring 2018.
- “The Right to Counsel in Utah: An Assessment of Trial-Level Indigent Defense Services,” Sixth Amendment Center, 2015.
- “October 26, 2015 Report.” Judicial Council Study Committee on the Representation of Indigent Criminal Defendants in Trial Courts.”
- “Justice Derailed: A case study of abusive and unconstitutional practices in Colorado city courts.” ACLU of Colorado, October 5, 2017.
- “Utah Indigent Defense Commission: Follow-Up Site Visit Report,” Bureau of Justice Assistances, Office of Justice Programs, December 2019.
- “Principles on Fines, Fees, and Bail Practices,” National Task Force on Fines, Fees, and Bail Practices,
https://www.ncsc.org/_data/assets/pdf_file/0021/61590/Principles-on-Fines-Fees-and-Bail-Practices-Rev.-Feb-2021.pdf
- “Fifty-Eight Years and Counting: The Elusive Quest to Reform Arizona’s Justice of the Peace Courts.” Anne E. Nelson, Arizona Law Review, Vol. 52:533 (2010).
- “Four Essential Elements Required to Deliver Justice in Limited Jurisdiction Courts in the 21st Century.” 2013-2014 Policy Paper, Conference of State Court Administrators.
- “Investigation of the Ferguson Police Department.” United States Department of Justice, Civil Rights Division. March 4, 2015.
- “Public Safety – Municipal Courts.” Better Together, The Missouri Council for a Better Economy. October 2014.
- “Civil Practice in Montana’s ‘People’s Courts:’ The Proposed Montana Justice and City Court Rules of Civil Procedure.” Cynthia Ford. The Scholarly Forum@Montana Law, The University of Montana School of Law. January 1, 1997.
- “Missouri Municipal Courts: Best Practice Recommendations. National Center for State Courts and State Justice Institute. November 2015.
- “Disorder in the People’s Courts: Rethinking the Role of Non-Lawyer Judges in Limited Jurisdiction Court Civil Cases.” Cathy Lesser Mansfield. New Mexico Law Review, Vol. 29, Winter 1999.
- “Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California.” Western Center on Law & Poverty, et al. 2015.
- “No Justice in Utah’s Justice Courts: Constitutional Issues, Systemic Problems, and the Failure to Protect Defendants in Utah’s Infamous Local Courts.” Samuel P. Newton, Teresa L. Welch and Neal G. Hamilton. Utah Onlaw: The Utah Law Review Online Supplement, Volume 2012.
- “When Your Judge Isn’t a Lawyer.” Matt Ford. Politics, February 5, 2017.
- “Preventing Whack-a-Mole Management of Consumer Debt Cases: A proposal for a Coherent and Comprehensive Approach for State Courts.” Paula Hannaford-Agor and Brittany Kauffman. Institute for the Advancement of the American Legal System, University of Denver, February 28, 2020.
- “The Evolution of Utah’s Justice Courts.” Judge Paul C. Farr, Utah Bar Journal, Vol. 29, No. 4, July/August 2016.

"The Face of the Judiciary: Utah's Justice Courts." Judge Paul C. Farr, Utah Bar Journal, Vol. 25, No. 1, Jan./Feb. 2012.

Utah Judicial Council meeting minutes from February 27, 2006 and November 26, 2007.

"Interim Report." Justice Court Study Committee, December 3, 1997.

"A Guide to the Federal Magistrate Judge's System." Peter G. McCabe. Federal Bar Association White Paper, August 2014, updated October 2016.

Bernat v. Allphin, 106 P.3d 707 (Utah 2005)

City of White House v. Whitley, 979 S.W. 2d 262 (Tenn. 1998)

North v. Russell, 427 U.S. 328 (1976)

Taylorsville City v. Mitchell, 466 P.3d 148 (Utah 2020)

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Attachment D – Summary of Prior Justice Court Reforms in Utah

1850	Organic Act organizing Utah Territory	Federal legislation creating a territorial court system that included justices of the peace.
1896	Utah Constitution	Article VIII of the Utah Constitution established the judiciary, including justices of the peace.
1978-1996	Circuit Courts	Circuit Courts handled misdemeanor offenses during this time-period.
1983	CCJJ Task Force	The legislature created the Utah Commission on Criminal and Juvenile Justice which established a task force to study changes to the justice of the peace system.
1984	Constitutional Amendment	Article VIII underwent significant amendment. Section 11 was added which prohibited requirements that justices of the peace be members of the bar.
1989	Justice Courts Created	Based on the task force's recommendations, justices of the peace were eliminated and justice courts were created.
1996	Justice Court Jurisdiction	With the dissolution of the Circuit Courts, jurisdiction over Class B and C misdemeanors and small claims case fell to justice courts.
2007	Nehring Commission	The Judicial Council established a committee to study justice court reform. It was chaired by judge (and subsequently justice) Ronald Nehring. Recommendations that were adopted included: The current judicial selection process was made applicable to justice courts. 6-year terms of office implemented followed by a retention election. Judge's pay set at 50-90% of a district court judge and cannot be diminished. Recommendations that were not adopted included: At least a 4-year degree for judges and eliminating part-time positions.
2011	H.B. 494	Required recording of all justice court proceedings.
2016	H.B. 160	Required judges in first and second class counties to have a law degree.
	S.B. 155	Creation of the Indigent Defense Commission.